Jurisdictional Statement

81-1731

NO.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1981

ADOLPH SCHATZLE,
Appellant,

VS.

HONORABLE JAMES C. KIRKPATRICK ET AL.,
Appellees.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI,
CENTRAL DIVISION

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

The General Assembly of the State of Missouri failed to pass a statute reapportioning the Congressional districts of the state after the 1980 federal census. A three-judge district court, with Judge Wangelin dissenting, ordered a redistricting plan into effect which had never been considered by either house of the Assembly. The questions presented on this appeal are:

1. whether the district court erred, in view of the principles of comity and federalism, in adopting its own plan instead of adopting a plan considered by the Missouri legislature; and
2. whether Kirkpatrick v. Preisler, 394 U.S. 526, 89 S.Ct. 1225 (1969) should be overruled.

LIST OF PARTIES TO THE PROCEEDINGS BELOW

This appeal involves four consolidated cases. The plaintiffs in Shayer v. Kirkpatrick, No. 81-4144-CV-C are Sydell Shayer, Linda Claire McDaniel, Shirley Albert, Andi Cenedella, Esther Myers, and Ann Reed. The defendant is Honorable James C. Kirkpatrick, Secretary of State of Missouri. The City of St. Louis, Vincent C. Schoemehl, Jr., Geraldine Osborn, St. Louis Regional Commerce and Growth Association, James M. O'Flynn, and John H. Poelker were allowed to intervene in this action. The plaintiffs in Overschmidt v. Kirkpatrick, No. 81-4180-CV-C, are William Overschmidt, Adolph Schatzle, Brian Hall, Mickey Brown, George Engelback, Earl Heitmann and Cecil Crutchfield. The defendant is the Honorable James C. Kirkpatrick.

The plaintiffs in Missouri State Conference of Branches of the NAACP v. Bond, No. 81-4196-CV-C, are the Missouri State Conference of Branches of the National Association for the Advancement of Colored People, Inc., St. Louis Branch, NAACP, St. Louis County Branch, NAACP, Cape Girardeau Branch, NAACP, Festus-Crystal City Branch, NAACP, Hannibal Branch, NAACP, Malden Branch, NAACP, Mexico Branch, NAACP, Portageville Branch, NAACP, St. Charles Branch, NAACP, Fredda Witherspoon and James DeClue. The defendants are the Honorable Christopher Bond, Governor, and Honorable James C. Kirkpatrick, Secretary of State of the State of Missouri. The plaintiffs in Missouri State Conference of Branches of the NAACP v. Bond, No. 81-4184-CV-C, are the Missouri State Conference of

Branches of the National Association for the Advancement of Colored People, Inc., Kansas City Branch, NAACP, St. Joseph Branch, NAACP, Jefferson City Branch, NAACP, Columbia Branch, NAACP, Chillicothe Branch, NAACP, Kennett-Dunklin Branch, NAACP, Marshall Branch, NAACP, Joplin Branch, NAACP, Dr. Freda Witherspoon and Ommie L. Melms. The defendants are Honorable Christopher Bond and Honorable James C. Kirkpatrick.

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JURISDICTIONAL STATEMENT

CITATION TO OPINION BELOW

The Memorandum Opinion and Order of the three-judge district court filed on January 7, 1982 in the United States District Court for the Western District of Missouri, Central Division, is not officially reported. It is set forth in the accompanying Appendix at 1-101.

JURISDICTION

This is a direct appeal from an Order by a three-judge district court redistricting the Congressional districts in Missouri. The jurisdiction of the court below was based upon 28 U.S.C. §§1343, 2201, 2202 and 2284.

The Order appealed from was entered on January 7, 1982 and mandatorily enjoined the Secretary of State of the State of Missouri to implement the redistricting plan set forth in the majority opinion of the three-judge district court. Adolph Schatzle, a plaintiff below, filed his notice of appeal on February 5, 1982.

This appeal is brought pursuant to 28 U.S.C. §1253.

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution

Article 1. Section 2.

Clause 1. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

Article I. Section 2.

Clause 3. Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those

bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

Article I. Section 4. Clause 1. The Times, Places and Manner of Holding Elections for Senators and Representatives, shall be prescribed in each state by the Legislature thereof, but the Congress may at any time by law make or alter such regulations except as to the places of choosing Senators.

Amendment 14. Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any persons within its jurisdiction the equal protection of the laws.

Missouri Constitution

Article III. Section 45. Congressional apportionment. --When the number of representatives to which the state is entitled in the House of the Congress of the United States under the census of 1950 and each census thereafter is certified to the governor, the general assembly shall by law divide the state into districts corresponding with the number of representatives to which it is entitled, which districts shall be composed of contiguous territory as compact and as nearly equal in population as may be.

STATEMENT OF THE CASE

Because of the results of the 1980 federal census, Missouri loses one representative in the United States

House of Representatives. Under Article I, §§2 and Amendment XIV, §1 of the United States Constitution and Article III, §45 of the Missouri Constitution it was the duty of the General Assembly of the State of Missouri in this situation to redistrict the Missouri Congressional districts into districts as nearly equal in population as may be. The General Assembly considered several plans for redistricting the Congressional districts to reduce the number of districts from ten (10) to nine (9) in its regular 1981 session but was unable to pass a redistricting bill in either house of the Assembly before it adjourned on June 15, 1981.

Appellant Adolph Schatzle, a citizen and resident of Missouri and a registered voter in what was then the Tenth Congressional District, then brought suit (Civil Action No. 81-4180-CV-C) along with six other plain-

tiffs below in the United States District Court for the Eastern District of Missouri against the Missouri Secretary of State seeking a court ordered apportionment plan. Other suits seeking court ordered apportionment plans were also filed by plaintiffs Shayer et al. (Civil Action No. 81-4144-CV-C), and the Missouri State Conference of Branches of the National Association for the Advancement of Colored People, Inc. et al. (Civil Actions No. 81-4196-CV-C and 81-4184-CV-C). These suits were consolidated in the United States District Court for the Western District of Missouri and a three-judge panel was appointed to hear them.

A hearing was held on September 28, 1981 at which testimony was received on several plans considered by the Missouri Senate including one plan (called the Senate Committee Substi-

tute) which was recommended to the full Senate for passage by a seven to one (7-1) vote but was never voted on. Testimony was received that the Senate Committee Substitute had the votes to pass the Senate but was never voted on because of the threat of a filibuster.

After the hearing, the General Assembly was called into special session to consider the matter of redistricting and on November 17, 1981 a redistricting plan (called the Griffin plan) was passed by the Missouri House by a vote of 94-63, with all members of the Missouri Black Caucus voting for the plan. The Senate, however, was again unable to pass a bill and the special session adjourned without enacting redistricting legislation.

On January 7, 1982, after the adjournment of the special session of the General Assembly, the three-judge

district court issued its Memorandum Opinion and Order which is the subject of this appeal. In that Opinion and Order, the majority promulgated a redistricting plan which "achieves population equality better than any plan submitted to this court and, so far as we can determine, better than any plan proposed in the legislature." (App. 25) The variance between the largest and smallest districts in the majority plan is 0.18% and the average variance is 0.054%. The dissent adopted a plan which was substantially the same as the Senate Committee Substitute. The variance between the largest and smallest districts in the dissent's plan was 1.16% and the average variance was 0.29% (based on corrected census figures dated October 2, 1981).

The Griffin plan, which had passed the Missouri House in the spe-

cial session, was not discussed by either the majority or the dissent in their opinions, although the court was certainly aware of the activities of the special session. The Griffin plan had a variance between the largest and the smallest districts of 0.75% and an average variance of 0.21%.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

Introduction

This appeal involves eliminating the undue interference of the federal judiciary with a legitimate activity of the States, namely Congressional redistricting. Although the federal judiciary must protect federal rights, comity and the principles of federalism require that the ways used to protect those rights must interfere minimal

with the activities constitutionally assigned to the States. The interference has not been minimal in the area of Congressional redistricting. This Court's decision in Kirkpatrick v. Preisler, 394 U.S. 526 (1969), requiring the legislatures to pursue the will-o'-the-wisp of mathematical precision, practically ensures unnecessary involvement of the federal judiciary in this area. And the court below in adopting a plan which had never been considered by the legislature, as opposed to adopting or making minor variations in a plan that the legislature had considered, overstepped the proper bounds of federal action in this sensitive area.

All of these issues are substantial. They go to the very core of federal-state relationships and the proper division of responsibilities be-

tween the federal government and the States.

I.

THE COURT BELOW ERRED IN ADOPTING A PLAN NEVER CONSIDERED BY THE LEGISLATURE.

The district court stated that "The plan we are adopting achieves population equality better than any plan submitted to this court and, so far as we can determine, better than any plan proposed in the legislature." App. 25. In adopting its own plan instead of adopting in whole or with modifications a plan considered by the legislature, the court below preempted the legislative task and intruded upon state policy more than necessary, which action was directly con-

trary to this Court's holding in White v. Weiser, 412 U.S. 783, 795 (1973). Weiser also holds that in the context of congressional reapportionment the district courts should honor state policies as expressed in statutory and constitutional provisions or in the reapportionment plans proposed by the state legislature, whenever adherence to state policy does not detract from the requirements of the Federal Constitution. 412 U.S. at 795. In failing to adopt or modify one of the two proposed plans which went farthest in the Missouri legislature, namely the Griffin plan which passed the Missouri House and the Senate Committee Substitute which was voted out of committee but was never voted on by the full Senate, the district court majority failed to honor the state policies expressed in those plans.

Admittedly in Weiser the legislative plan under consideration has passed both houses of the state legislature and was thus a more perfect representation of the state's policies than either of the two legislative plans involved in this appeal. Yet the reasoning of Weiser does not permit the district courts to refuse to honor state policies simply because the legislative plan embodying them did not become law. The principle of Weiser is one of minimal interference with state policy in choosing among reapportionment plans. It cannot be said that the judicial interference with state policy is minimal when plans proposed by the legislature are discarded and the court adopts a plan wholly of its own making. What the court below did constituted maximal interference, not minimal.

Appellant also admits that the variation of the plans proposed by the legislature from precise mathematical equality exceeds that of the plan adopted by the district court. The justification for those variations is addressed in subsection II infra, but even absent justification for such variations the principle of minimal judicial interference in the area of congressional reapportionment requires that the district court modify a plan proposed by the legislature instead of adopting a plan having no legislative sanction whatsoever.

The principle of minimal interference found in Weiser, although not always put in terms of not intruding more than necessary upon state policy, finds abundant support in the decisions of this Court. In Fair Assessment in Real Estate Association v.

McNary, _____ U.S. _____, 102 S. Ct. 177, 184 (1981), this Court recognized that traditional principles of comity and federalism require, even in civil cases, that the National Government in protecting federal rights and federal interests always endeavor to do so in ways that will not unduly interfere with the legitimate activities of the States. Article I, Section 4 of the United States Constitution makes clear that congressional apportionment is a legitimate activity of the States. Although McNary was not an apportionment case, the principles of federalism have been applied to such cases. In Wise v. Lipscomb, 437 U.S. 535, 539 (1978), case involving state legislative apportionment, the Court stated that

> "redistricting and reapportioning legislative bodies is a legislative task which the federal

courts should make every effort not to preempt." (Emphasis added.)

Inasmuch as congressional apportionment is also a legitimate activity of the States, there is no reason for the federal courts to do any less in trying not to preempt legislative action. In the same view, Justice White could have been talking about the decision of the court below when he referred to the Court's decision in Kirkpatrick v. Preisler, 394 U.S. 526 (1969) as leading to "an unnecessary intrusion of the judiciary into legislative business." 394 U.S. at 535 (dissent).

In addition to reducing interference of the federal judiciary in a legitimate state activity to a minimum, as required by Weiser, adoption or modification of a plan considered by the legislature would further other constitutional goals. As recognized by the

Court in Weiser, districting inevitably requires political decision to be made by those charged with the task. 412 U.S. at 795-96. But federal courts lack the political authoritativeness of the legislature in performing such a task. Wise v. Lipscomb, 437 U.S. at 541. A political decision made by even one house of the legislature has more legitimacy than the same decision made by two or even three unelected judges. Political legitimacy of the redistricting process has to be an important goal, but it is one that is completely thwarted by the approach of the court below.

Adoption or modification of a plan considered by the legislature has the added advantage of giving the legislature a reason to perform its duty to redistrict. Why should a legislature tackle the incredibly difficult

problem of redistricting when a federal court stands ready and waiting to implement its own plan?

The court below erred in failing to adopt or modify either the Griffin plan or the Senate Committee Substitute plan. In fact, the majority opinion carefully makes no mention whatsoever of the special session of the Missouri legislature. In passing, the majority opinion notes that the dissent's plan "is a proposal that was not adopted by either the House or the Senate in the General Assembly." App. 26. But the majority neglects to say that one plan, the Griffin plan, was passed by the House. Such an omission does little to enhance the political legitimacy of the plan the court below did adopt.

The district court expressly rejected the approach of adopting leg-

islative proposals based upon how far they went in the legislative process or upon testimony as to their prospects for passage, calling that "a massive intrusion into the legislative process." App. 40. But in an even greater intrusion, the court below adopted a plan with no legislative background, and hence no political legitimacy, at all.

The error of the district court is highlighted when its approach is compared with that of the three-judge district court in Skolnick v. State Electoral Board of Illinois, 336 F.Supp. 839, 845-846 (N.D. Ill. 1971). In Skolnick the court, rather than devise its own plan, adopted a congressional redistricting plan that had been approved by one house of the Illinois legislature but not voted on by the other. That plan had a population var-

iance from the largest district to the smallest district of 1.14%. When requested to alter the plan, the court refused to do so stating that "it would not be a proper judicial task to undertake." 366 F.Supp. at 846. The Skolnick court approach was proper and the court below erred in not following it.

II.

KIRKPATRICK v. PREISLER, 394 U.S. 526 (1969), WHICH WAS FOLLOWED BY THE COURT BELOW, ENSURES UNDUE INTERFERENCE BY THE FEDERAL JUDICIARY IN CONGRESSIONAL REDISTRICTING AND SHOULD BE OVERRULED.

The court below made clear that it was following the Kirkpatrick holding in deciding the present case. It stated that any deviation from exact population equality must be either unavoidable with the available data or

one for which justification is shown. App. 21. The district court then went on to select its plan solely because it achieved population equality better than any plan submitted to it or proposed in the legislature. App. 26. It then held the dissent's plan unconstitutional because its population variance (1.16% from largest to smallest district) was greater than that of the plan the court adopted. App. 26.

Appellant does not dispute that the court below correctly read Kirkpatrick to require justification, presumably by the proponent of any reapportionment plan, for any deviation from absolute population equality. But this requirement ensures that the federal judiciary will become deeply involved in congressional reappointment. Kirkpatrick requires the district court

to either come up with its own plan or modify a legislative plan whenever exact mathematical precision is not present, because it requires justification for any population variances. In other words, what Kirkpatrick does is make "the standards of reapportionment so difficult to satisfy that the reapportionment task is recurringly removed from legislative hands and performed by federal courts." Gaffney v. Cummings, 412 U.S. 735, 749 (1973), which concerned state legislative, not congressional, reapportionment.

In Gaffney the district court refused to adopt any of the plans submitted to it but instead appointed a Master who devised an apportionment scheme having a lower population deviation than of any of the plans submitted. This Court criticized such an approach stating:

> "Was the Master compelled, as a federal constitutional matter, to come up with a plan with smaller variations than were contained in appellee's plan? And what is to happen to the Master's plan if a resourceful mind hits upon a plan better than the Master's by a fraction of a percentage point? Involvements like this must end at some point, but that point constantly recedes if those who litigate need only produce a plan that is marginally better when measured against a rigid and unyielding population equality standard.
>
> "The point is, that such involvement should never begin." 412 U.S. at 750-51.

In this case, the district court has done exactly what this Court criticized in Gaffney.

There is nothing in the reasoning of Gaffney that makes it inapplicable to congressional redistricting. Unless Kirkpatrick is overruled, the district courts will continued to be "bogged down in a vast, intractable apportionment slough". Gaffney v. Cummings, 412 U.S. at 750. As Justice

White predicted in his dissenting opinion in Kirkpatrick:

> "the courts will now be engaged in quibbling disputes over such questions as whether a plan with a 1% variation is "better" than one with a larger variation, say 1.1% or even 2%."

The district court below engaged in the quibbling dispute over whether a plan with a 0.18% variance is better than one with a variation of 1.16%. As Justice White predicted, Kirkpatrick has injected the courts into these "minor squabbles" in an "unacceptable preemption of the legislative function." 394 U.S. at 566. It should now be overruled.

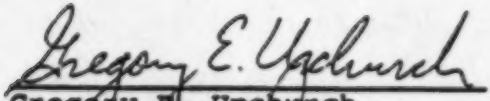
In Gaffney v. Cummings, 412 U.S. 735, 745 (1973) this court recognized that the United States Census is inherently less than absolutely accurate and in fact the error in the 1970 Census was estimated to be about 2.5%.

See also Kirkpatrick v. Preisler, 394 U.S. 526, 538-39 (Fortas, J., concurring). It makes no sense to continue the massive interference in state affairs by the federal judiciary that Kirkpatrick requires when that interference involves population variations among districts that are less than the error in the census figures. Moreover, since population fluctuations are common, the concept of mathematical precision required by Kirkpatrick is an illusion. The courts and the legislatures should not have to waste their time pursuing a will-o-'the-wisp.

CONCLUSION

For the foregoing reasons, appellant respectfully requests that this Court note probable jurisdiction of this appeal and accept briefs on the merits and oral argument.

Respectfully submitted,



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Appendix

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SYDELL SHAYER, ET AL.,)
)
Plaintiffs,)
)
v.)
)
HONORABLE JAMES C.)
KIRKPATRICK, Secretary)
of State of Missouri,)
)
Defendant.)

No. 81-4144-CV-C

CITY OF ST. LOUIS, ET AL.,)
)
Intervenors.)
)
and)
)
ST. LOUIS REGIONAL)
COMMERCE AND GROWTH)
ASSOCIATION, ET AL.,)
)
Intervenors.)
)
WILLIAM OVERSCHMIDT,)
ET AL.,)
)
Plaintiffs,)
)
v.)
)
HON. JAMES C. KIRKPATRICK,)
Secretary of State of Missouri,)
)

Defendant.)

No. 81-4180-CV-C

MISSOURI STATE CONFERENCE OF)
BRANCHESOF THE NATIONAL)
ASSOCIATION FOR THE ADVANCEMENT)
OF COLORED PEOPLE, INC., ET AL.,)
)
Plaintiffs,)
)
v.)
)
HONORABLE CHRISTOPHER BOND,)
Governor, and HONORABLE JAMES)
C. KIRKPATRICK, Secretary of)
State of the State of Missouri,)
)
Defendants.)

No. 81-4196-CV-C

MISSOURI STATE CONFERENCE OF)
BRANCHES OF THE NATIONAL)
ASSOCIATION FOR THE ADVANCEMENT)
OF COLORED PEOPLE, INC., ET AL.,)
)
Plaintiffs,)
)
v.)
)
HONORABLE CHRISTOPHER BOND,)
Governor, and HONORABLE JAMES)
C. KRIKPATRICK, Secretary of)
State of the State of Missouri,)
)
Defendants.)

No. 91-4184-CV-C

Before GIBSON, Senior Circuit Judge, WANGELIN, Chief District Judge, and WRIGHT, District Judge

MEMORANDUM OPINION

GIBSON, Senior Circuit Judge, joined by WRIGHT, District Judge.

This is an action in which the court is being asked to redistrict the State of Missouri into nine congressional districts. Missouri is currently divided into ten districts pursuant to the congressional allocation of 1972 and as set forth in Preisler v. Secretary of State, 341 F. Supp. 1158 (W.D. Mo. 1972), aff'd mem. sub nom Danforth V. Preisler, 407 U.S. 901 (1972). Because of the population count disclosed by the 1980 decennial census, Missouri is now entitled to only nine members in the United States House of Representatives. In accordance with federal constitutional requirements, appropriate federal legislation, and pertinent Missouri statutes and constitutional provisions,

Missouri is obligated to divide the state into nine congressional districts. It has failed to enact an apportionment plan.

I. Facts

Shortly after the Missouri General Assembly adjourned its regular session on June 15, 1981, without passing a congressional redistricting bill, actions seeking a court-ordered apportionment plan were filed in both the Eastern and Western Districts of Missouri.

The parties challenged the constitutionality of the existing apportionment (now outdated by the new populationfigures and decreased allocation of congressional districts); therefore, three-judge courts were established pursuant to 28 U.S.C. §2284(a) (1976). The

same judges were named to each panel. The allegations of an unconstitutional apportionment provide the jurisdictional basis. This court has jurisdiction under 28 U.S.C.A. §1331 (1981 Supp.) (federal question) and 28 U.S.C. §1343(a)(3) (Supp. III 1979) (deprivation of constitutional rights). The parties also alleged a violation of 42 U.S.C. §1983 (Supp. III 1979), which provides for liability for deprivation of constitutional rights.

We determined that according to 28 U.S.C. §1391(b) (1976) venue was proper only in the Western District. Section 1391(b) allows a claim to be brought only where all defendants reside or where the claim arose. A claim arises where the complained-of acts or omissions of a defendant occur. 92 C.J.S. Venue §80. The defendant, Honorable James C. Kirkpatrick, Secretary of

State, has his offices in the Western District (Jefferson City, Missouri), and his actions relating to elections would occur in the Western District. Therefore, a claim based on his conduct would accrue where his election duties are performed, i.e., the Western District of Missouri. The two cases filed in the Eastern District were transferred to the Western District and consolidated with the actions that were filed in the Western District. All motions to intervene were granted.

We held a hearing on September 28, 1981. Interested persons, both parties and nonparties, were allowed to present plans and suggestions for redistricting. Other plans and suggestions were subsequently filed with the clerk of the court.

In November 1981, the Governor called a special legislative session to

consider the congressional redistricting issue. To prevent speculation on the plans of the court from affecting legislative action, we held no hearings and issued no orders while the General Assembly was in session. The General Assembly adjourned its extraordinary session on December 17, 1981, without passing an apportionment plan. Thus, this court is left with the task of providing an apportionment remedy.

II. Proprietary of the Three-Judge Court

According to 28 U.S.C. §2284(a) (1976): "A district court of three judges shall be convened when...an action is filed challenging the constitutionality of the apportionment of congressional districts...." The parties alleged a violation of their rights under Article I, §2 of the United States

Constitution. Paragraph 3 of that section reads: "Representatives...shall be apportioned among the several States which may be inclkuded within this Union, according to their respective Numbers...." Paragraph 1 states: "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States...." Missouri has not enacted a redistricting law consistent with paragraph 3, and failure to do so could result in a deprivation of the right to select representatives, a violation of paragraph 1. Therefore the constitutionality of the present, ten-district apportionment is called into question. It is apparent that the present apportionment plan (based on the 1970 census figures and subsequent allocation of congressional seats) is unconstitutional.

III. The Constitutional Violation

The General Assembly's failure to provide a means for congressional representation would, if unremedied, result in an unconstitutional deprivation of the Article I, §2, 1 right of the people to select representatives. Indeed, one authority has called a legislature's failure to reapportion in light of new census figures "patently and obviously unconstitutional." Wright, Miller, and Cooper, Federal Practice and Procedure, §4235, at 400; see Ryan v. Board of Elections, 661 F.2d 1130, 1135 (7th Cir. 1981). The apportionment ordered in Preisler v. Secretary of State, 341 F.Supp. 1158 (W.D. Mo. 1972), is now outmoded and is unconstitutional because it fails to provide a means by which Missouri can choose its none representatives.

Our next task is to determine the proper remedy.

IV. The Remedy

In formulating the proper remedy, we first note that a declaratory judgment is one permissible remedy. Under 28 U.S.C. §2201 (Supp. II 1978), that remedy is available in cases of "actual controversy," and 28 U.S.C. §2202 (1976) allows for further relief based on a declaratory judgment. We are also aware that 42 U.S.C. §1988 (1976) requires use of the common law when necessary to furnish suitable remedies. That section is applicable to the instant case because it applies to actions brought under 42 U.S.C. §1983 (Supp. III 1979). See section I, supra.

Beyond these general considerations, we perceive two possible remedies. First, we could draw a court plan. Second, we could have elections at large, either by court order or by dismissal of the actions.

The first option was adopted by the three-judge court in Preisler v. Secretary of State. There the court also found an apportionment unconstitutional. In that case, population shifts disclosed by the 1970 census showed population variances between districts so great as to be unconstitutional. 341 F.Supp. at 1160. To remedy the situation the court invalidated the then-existing apportionment and drew a map which substantially achieved population equality.

A second option would be to order an election at large, or to dismiss the court actions with the assump-

tion that an election at large would be held. The basis for this option would be 2 U.S.C. §2a(c)(5) (1976), passed in 1929, which reads: "Until a State is redistricted in the manner provided by the law thereof after any apportionment,...if there is a decrease in the number of Representatives and the number of districts in such State exceeds such decreased number of Representatives, they shall be elected from the State at large."

On the other hand, a statute subsequently enacted in 1967, 2 U.S.C. §2c (1976), appears to prohibit at-large elections. It reads: "In each State entitled...to more than one Representative..., there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled, and Representatives shall be elected only from dis-

tricts so established, no district to elect more than one Representative...." The difficulty results from the fact that neither section 2c nor its legislative history makes any reference to repealing section 2a(c)(5). Nevertheless we conclude that the later statute, section 2c, repealed section 2a(c)(5) by implication. We base this conclusion on several factors. First, nothing in section 2c suggests any limitation on its applicability. Second, the floor debate on section 2c[1] indicates that Congress intended to eliminate the possibility of at-large elections, including those in situations where the legislature had failed to enact a plan. The following comments, made by Senators Bayh and Baker, are enlightening:

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[1]Section 2c was attached as a rider to a private immigration bill. Act of December 14, 1967, Pub. L. No. 90-196, 81 Stat. 581.

MR. BAKER: [2 U.S.C. §2c] strictly provides in a straightforward manner that when there is more than one Member of the House of Representatives from a State, the State must be districted, and the Members may not run at large.

. . . .

MR. BAYH: . . . Suppose a State legislature does not do it [redistrict]. Does the Senator not think that, to be consistent, we should say that the Federal court should not be permitted to reapportion a State and let all the legislators run at large?

MR. BAKER: With respectful deference to my colleague, I think not; because I believe that you are then running afoul of the very problem that is created by occasional failure of State Legislatures to adhere to the provisions of article I of the Constitution.

. . . .

MR. BAYH: . . . I just wish to take one brief comment in summary, in light of the colloquy.

This will make it mandatory for all Congressmen to be elected by single-Member districts, whether the

reapportionment is done by the State legislatures or by a Federal court.

> MR. BAKER: That is my understand ing.

113 Cong. Rec. 31718-20 (1967). Furthermore, the Senators made clear their distaste for at-large elections. Senator Bayh said: "[W]e know that if [Hawaii and New Mexico] are excluded from the overall coverage, it can pass the House and we can get a prohibition of at-large elections, which we all believe is necessary." Id. at 31719. Senator Baker said: "The concept of single-Member districts for a unique and special reason has been a nonpartisan undertaking by Members on both sides of the aisle." Id. at 34365.[2]

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[2]For the entire floor debate, see 113 Cong. Rec. 31718-20, 34032-39, 34364-70 (1967).

We realize that the court decisions which prompted Congress to enact section 2c were not based on the statute at issue here, section 2a(c)(5). Rather, those court decisions were based on section 2a(c)(1), which provides a remedy when a state fails to redistrict and there is not a change in the number of resresentatives. However, that remedy, maintenance of the old districts, would usually violate the one man-one vote rule of Wesberry v. Sanders, 376 U.S. 1 (1964), because of population inequalities. See section V.A.1., infra. Nevertheless, we can see no reason to limit section 2c to the situation where there is a failure to reapportion but there is no change in the number of representatives. The plain language of section 2c suggests no such limitation. Furthermore, there is no reason to think that had Congress considered the situa-

tion where the number of representatives is decreased, it would have favored at-large elections in that context. The passages from the floor debate quoted above indicate opposition to at-large elections, rather than opposition to at-large elections prompted by Wesberry.

We also realize that "repeals by implication are not favored." Universal Interpretive Shuttle Corp. v. Washington Metropolitan Area Transit Commission, 393 U.S. 186, 193 (1968). Nevertheless, such repeals are not unprecedented. See Gordon v. New York Stock Exchange, 422 U.S. 659, 685 (1975). It is well settled that when a later statute is inconsistent with an earlier statute, the later one repeals the earlier. United States v. Yuginovich, 256 U.S. 450, 463 (1921); United States v. Tynen, 78 U.S. (11 Wall.) 88, 92 (1870); see United States

v. California, 297 U.S. 175, 188 (1936). Here, the plain language of section 2c is inconsistent with section 2a(c)(5), warranting a finding of repeal by implication.

Therefore, the only appropriate remedy is a court-ordered apportionment. The plan we have adopted is set * forth in "Appendix A." We now explain the criteria we used in formulating the plan.

V. Reapportionment Criteria

In drawing the district boundaries we are guided by the United States Constitution, the State of Missouri Constitution, state law, and sound judicial discretion. An explanation of the criteria we have used is in order.

A. Federal Constitutional Requirements

1. Population

Our first obligation is to follow the requirements of the United States Constitution. The only requirement that has expressly been found by the Supreme Court in congressional apportionment is that the population of the districts must be as equal as practicable.

The population standard for congressional districts was announced in Westberry v. Sanders, 376 U.S. 1 (1964). The Court said: "We hold that, construed in its historical context, the command of Art. I, §2, that Representatives be chosen 'by the people of the several States' means that as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's." Id. at 7-8 (footnotes omitted). Five years later the

Court elucidated that "as nearly as practicable" standard in Kirkpatrick v. Preisler, 394 U.S. 526 (1969). The Court declared: "[T]he command of Art. I, §2, that States create congressional districts which provide equal representation for equal numbers of people permits only the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is shown." Id. at 531. See also White v. Weiser, 412 U.S. 783, 790-91 (1973). The Court expressly rejected a de minimis standard for population deviation.[3] The Court has called popula-

[3]The Court has put state legislature apportionment schemes to a less exacting scrutiny. The unconstitutionality of population variances in state legislative districts is based on the equal protection clause of the Fourteenth Amenment, not Art. I, §2. See, e.g., White v. Regester, 412 U.S. 755, 763 (1973).

tion equality "the preeminent, if not the sole, criterion on which to adjudge constitutionality" in congressional reapportionment. Chapman v. Meier, 420 U.S. 1, 23 (1975) (dictum).

The command of the Supreme Court is that there must be a reason for every deviation; the deviation must be either unavoidable with the available data, or there must be a permissible policy strong enough to justify the deviation.

The Court in Preisler specifically considered policies offered to justify deviations from the ideal. The following proffered justifications for population variances were found inadequate: (1) avoiding the fragmentation of political subdivisions, including counties and municipalities, (2) avoiding the fragmentation of distinct economic and social interests, (3) the

give and take of the legislative process, and (4) compactness of districts. 394 U.S. at 533-36. The Court said projected population shifts would justify variances, but these projections must be capable of precise documentation. The Court assumed without deciding that districts could be based on the eligible voter population rather than the total population. If that method is chosen, however, it must be applied throughout the state and not be based on haphazard adjustments.[4]

In Weiser, the Supreme Court left open the possibility that a dis-

[4]We note that the finding by the Preisler Court, that proffered justifications for population deviation were inadequqte, did not imply that these considerations were illegitimate. The Court did not suggest that political subdivisions or economic and social interests cannot be considered; rather, these factors must be secondary to population equality.

trict court could deviate from the ideal population in an attempt to implement as much as possible a plan passed by the legislature. 412 U.S. at 795-97. There the Court ordered a district court to explain why it had not adopted an apportionment plan based on one passed by the legislature. Id. at 796-97. The plan adopted by the legislature had been found unconstitutional because the districts were not as equal in population as practicable. Id. at 788. The plan adopted by the court disregarded the one passed by the legislature. Id. at 787. However, the plan adopted by the court did not achieve population equality as well as the one based on the legislature's plan. Id. at 796. Therefore, Weiser does not stand for the proposition that implementation of a legislative plan is more important than population equality. Furthermore, four Justices

concurred solely on the population equality issue. Id. at 798 (Powell, J., concurring, joined by Burger, C. J., and Rehnquist, J.), id. (Marshall, J., concurring in part.)

In applying the "one man-one vote" rule, we have concentrated solely on population equality. The 1980 decennial census shows that Missouri has a population of 4,916,686, making the mathematical ideal for each district 546,298. We drew boundaries which give the districts populations as close as possible to equal, and we received assistance from demographic experts[5] to bring the population even closer to the ideal. Only one district deviates from the ideal by more than one-tenth of one

[5]The demographers of the State of Missouri Office of Administration, Division of Budget and Planning, and in particular Mark R. Reading, Project Director for Reapportionment, and T. Ryan Burson, Planner.

percent. The variance between the largest and smallest districts is 0.18%. The average variance is 0.054%. We did not consider possible justifications for a population variance because of the lack of reliable data to show population shifts and uncertainty as to what other policies can justify variance.

The plan we are adopting achieves population equality better than any plan submitted to this court and, so far as we can determine, better than any plan proposed in the legislature. The plan suggested by the dissent has a variance between the largest and smallest districts of 1.17%, more than six times as great as that in the plan we have adopted. The average variance is 0.34%, also more than six times as great as in the court plan. Only two of the districts in the dissent's plan (Sixth

and Seventh) have a variance smaller than that in the district with the greatest deviation in the majority plan (Fifth). Unless there is a justification for these deviations, the dissent's plan is not consitutional because it does not create districts with populations as equal as is practicable.

We are indebted to these gentlemen and the state agency they represent for their technical assistance in checking the population figures of the 1980 decennial census and the boundary locations of the various districts.

The dissent does not address this constitutional requirement, but two possible justifications for the population variances can be read into the dissenting opinion. The first is that the variances resulted from an attempt not to split counties. See p. 27, par. 3, post. Although we agree that this is

desirable, at least in rural counties, because it contributes to the efficient administration of elections, see p. 22, infra, it must be secondary to achieving population equality. Kirkpatrick v. Preisler, 394 U.S. at 533-34. The other possible justification is that the variance resulted from implementing a legislative plan. See p. 27, par. 1, post. Even if Weisler would allow a variance for that reason, a proposition not at all clear, p. 11, supra; In re: Illinois Congressional Districts Reapportionment Cases, No. 81 C 3915, slip op. at 12 (N.D. Ill. Nov. 23, 1981), appeal docketed, Nos. 81-1068 and 81-1077 (U.S. Dec. 9 and 10, 1981), it would not apply to the dissent's plan. Weiser dealt with a plan approved by the legislature and later found to be unconstitutional. The dissent's plan is a propos-

al that was not adopted by either the House or the Senate in the General Assembly. Such a plan can hardly be said to demonstrate any legislative intent other than a rejection of the plan.

The constitutional requirement is that population be as nearly equal as is practicable, and we have achieved this better than any other plan that has been presented to the court or considered by the General Assembly. Because of the population equality requirement, discussion of rewards or punishments for population changes in the old districts is irrelevant.

2. Race

The Supreme Court has also discussed the requirements of the Fourteenth and Fifteenth Amendments regarding minority voting rights. Although

these cases have usually dealt with non-congressional apportionment, the questions they raise might be applicable to congressional apportionment, and therefore they deserve our consideration.

The Supreme Court has held that only purposeful discrimination or abridgment of the vote violates the Fifteenth Amendment or the equal protection clause of the Fourteenth Amendment. City of Mobile v. Bolden, 446 U.S. 55 (1980). Although the opinion of the Court was only a four-justice plurality, Justice Stevens concurred on the basis that even invidious discrimination would not necessarily be unconstitutional, id. at 94, and Justice White dissented on the grounds that purposeful discrimination was not proved. Id. at 103. Only two Justices, Brennan and Marshall, felt that discriminatory impact would make out a constitutional violation. Id. at

94 (Brennan, J., dissenting), 103 (Marshall, J., dissenting). Thus it is clear that we are under no constitutional duty to draw a black-majority district.[6] This explanation of our criteria dispels any notion that a possible adverse impact on blacks is based on a discriminatory motive.

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On the other hand, race can constitutionally be considered. This principle can be discerned from the opinions in United Jewish Organizations v. Carey, 430 U.S. 144 (1977). Justices White, Stevens, and Rehnquist said that districts with black majorities can deliberately be drawn so long as white voting strength is not unfairly cancelled out. Id. at 165-68.[7] Justices Stewart and Powell, concurring in the judgment, said that a racial criterion is not unconstitutional per se. Id. at

[7] In the instant case, there is no danger of cancelling out white voting strength. If one black-majority district were drawn, it would give 11.1 percent of the Missouri congressional districts a black majority. Blacks comprise 10.5 percent and all nonwhites comprise 11.6 percent of the Missouri population. A comparison of the percentage of black-majority districts to the percentage of the black population is a proper way of determining whether use of racial criteria has cancelled out a group's voting strength., See United Jewish Organizations v. Carey, 430 U.S. at 166.

179-80.[8] Although lacking a majority opinion, a majority of the Justices in U.J.O. rejected the idea that the Constitution requires color-blind redistricting.

Three months after the U.J.O. decision was announced, the Court suggested in dicta the extent to which a district court must consider race in redistricting. In Connor v. Finch, 431 U.S. 407 (1977), the Court remanded a state legislative apportionment to a three-judge court because of population variances. The plan was also challenged as diluting black voting strength. The Supreme Court said in dicta that a court must explain departues from neutral guidelines if the departures have an adverse impact on black voting strength. In order to dispel any notion of invidious discrimination, we have not departed from neutral guidelines.

The bottom line as to our duty regarding black voting strength is that we cannot intentionally dilute it, we

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[8]Justices Brennan and Blackmun felt that a racial criterion in U.J.O. was permissible because of the applicability of the Voting Rights Act of 1965. They joined the part of Justice White's opinion relying on the Voting Rights Act, 430 U.S. at 155-65, but they did not join the part which said that race could be considered absent in the Act. Id. at 164-79 (Brennan, J., concurring). Justice Marshall took no part in the case, and Chief Justice Burger was the lone dissenter.

can--but need not--intentionally preserve it, and we probably cannot intentionally enhance it to the detriment of other groups' voting strength.

We have not attempted to divide Missouri's present black-majority district (the First). Instead, we have increased its geographic size to bring the population to the required amount. We drew a compact district by extending it to natural boundaries (the Missouri River/St. Louis County line on the north and Interstate Highway 44 on the south, connected by a line on the west that runs north-south which generally follows municipal boundaries or census tracts). This neutral approach achieves maximum compactness in the First district and also makes the Second district more compact by not wrapping it around the First district. This neutral approach comports with constitutional requirements.

3. Other Constitutional Criteria

Finally, there is a question as to whether it is constitutional to intentionally discriminate against non-racial voting groups such as religious, ethnic, economic, or political groups. See City of Mobile v. Bolden, 446 U.S. at 96 (Stevens, J., concurring); Bush v. Martin, 224 F.Supp. 449, 510 (S.D. Tex. 1963), aff'd, 376 U.S. 222 (1964), and cases cited therein. We need not resolve the question of the constitutionality of discrimination against these groups becasue we are not deviating from neutral standards.

B. Missouri Constitutional Requirements

The next legal standard is that imposed by the Missour Constitu-

tion: "[Congressional] districts shall be composed of contiguous territory as compact and as nearly equal in population as may be." Mo. Const. art. 3, §45. We respect the additional standard of compactness as a matter of law as well as of comity.[9] White v. Weiser, 412 U.S. at 795; Preisler v. Secretary of State, 341 F. Supp. at 1161; see Reynolds v. Sims, 377 U.S. 533, 584 (1964).

Determining whether a particular plan meets the state requirements can be difficult. No state appellate court has interpreted the words "compact" and "contiguous" in this section. We therefore look to the construction of those words in the sections of the constitution relating to apportionment of the Missouri House of Representatives,

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[9]The requirement of population equality is subsumed in the requirement of the United States Constitution.

Mo. Const. art. 3, §2, and the Senate. Id. at §5. Although there are no appellate cases construing the words relating to the House, there are cases which have construed them regarding state Senate apportionment. The Missouri Supreme Court has read the words as prohibiting "gerrymandering," long and narrow strips, and "branches", while requiring districts to be composed of "closely united territory." Preisler v. Doherty, 284 S.W.2d 427, 433-35 (Mo. banc 1965). See also State v. Hitchcock, 146 S.W. 40 (Mo. 1912). In both of these cases, apportionment plans were invalidated. 284 S.W. 2d at 437; 146 at 65.

Neither of these cases, nor others construing the words, see, e.g., Preisler v. Kirkpatrick, 528 S.W.2d 422 Mo. banc 1975); Preisler v. Hearnes, 362 S.W.2d 552 (Mo. banc 1962), gives us guidance as to the outer limits of com-

pactness and contiguity, although they do indicate a willingness on the part of Missouri courts to invalidate plans for failure to meet these standards. Furthermore, we do not know whether those words would be given an identical meaning as related to congressional apportionment.

It is important that our plan adhere to the requirements of the Missouri Constitution; if it were toe be invalidated by a state court because it failed to meet the compactness requirement, the state would be in a quagmire regarding the election of its congressional representatives. Just the existence of lengthy litigation on the issue would be harmful. While we cannot prevent litigation, we can endeavor to lessen the probability of legal challenges by adhering to state constitutional and

legal requirements where such requirements do not intrude on the commands of the United States Constitution. In fact, we are obligated to do so. White v. Weiser, 412 U.S. at 795.

Therefore, we strived not simply for legally sufficient compact and contiguous districts; we drew the most compact and contiguous districts we could, given the considerations involved and the weight of the various factors that go to make up the equation. We drew compact districts by blocking a district out from each of the four corners of the state until the proper population was reached, by concentrating one district in the Kansas City area,[10]

[10]The population of the five counties in the Missouri portion of the Census Bureau's Standard Metropolitan Statistical Area for Kansas City is 884,502, which is more than enough for one district.

and by concentrating three districts in four counties in the St. Louis area, where there are 149,610 people more than eough for three districts.[11] The last district is composed of the remaining area in the western part of the state. Complete compactness is lacking only because of our desire not to split rural counties, p. 22, infra, while achieving population equality.

On the other hand, the dissent's plan is not compact. A "finger" in the Eighth district probes into St. Louis County to secure approximately 1440,000 of the required population. There are unnecessary irregular lines

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[11]The population of the five counties in the Missouri portion of the Census Bureau's Standard Metropolitan Statistical Area for St. Louis is 1,788,504, while 1,638,894 people are needed to completely fill three districts. One of the counties in the SMSA, Franklin County, is not included in any of the St. Louis area districts.

between the Ninth and Second districts as the Ninth dips into two separate parts of St. Louis County. We do not think it is proper for a federal court to give so little regard to the state constitutional requirement of compactness when that requirement does not conflict with federal law.

C. Policy Considerations

Within these legal constraints there are, of course, many plans which could be devised. We now set forth those criteria which we believe are most appropriate for a court.

1. Legislative Practices

Because reapportionment is primarily a legislative function, we must follow the policies and preferences

of the state in fashioning an apportionment plan. Connor v. Finch, 431 U.S. at 414-15; White v. Weiser, 412 U.S. at 795, and cases cited therein. We did not want to intrude upon state policies any more than necessary to meet constitutional requirements. Whitcomb v. Chavis, 403 U.S. 124, 160-61 (1971). Adhering to state policies is a way in which we can give effect to the will of the majority of the people of Missouri. Preisler v. Secretary of State, 341 F. Supp. at 1161. Other than the state constitution's compact and contiguous requirements, state policies are difficult to discern. Following them is not required by state law, so we have given the compact and contiguous requirements preeminence over all other state policies.

The state legislature's own work on apportionment can be indicative

of state policy. When a state enacts apportionment legislation which is later declared unconsitutional, a court which fashions a remedy by drawing its own plan should follow the legislature's version as much as is constitutionally possible. White v. Weiser, 412 U.S. at 795-97; Preisler v. Secretary of State, 341 F. Supp. at 1161. In the instant case, however, we are being asked to apportion because no bill has been passed.

As an alternative, we could look to legislative proposals to attempt to discern a state policy. The further a bill goes in the legislative process (e.g., out of committee, passed by one house, passed by both houses but vetoes) the more it evidences a legislative policy. See Skolnick v. State Electoral Board, 336 F. Supp. 839, 846 (N.D. Ill. 1971). On the other hand, the failure of a bill to be enacted evidences a leg-

islative policy that the bill is not desired by the legislature. Therefore, we cannot simply embrace as our own the bill that went the furtherest or that experts believe would have or could have passed. Such action would be a massive intrusion into the legislative process. We would, in effect, be amending the rules for enacting legislation. Although political scientists may argue over the extent to which the legislative process reflects the will of the people, we must take the procedures as we find them.

This does no mean that all legislative proposals are useless. To the extent the proposals which came closest to passing have common elements, we have tried to incorporate those elements into our plan. However, plans considered by the General Assembly were so different from one another that ex-

tracting common elements is difficult. Furthermore, even when some general common elements can be discerned, they are hard to apply. The specific application of these elements will often have ramifications on the entire plan, which caused the dispute and present stalemate in the General Assembly.

Another indication of a state policy is the state's historical practices regarding apportionment. See Connor v. Finch, 431 U.S. at 419, 424. We have adhered to these practices to the extent possible. However, these practices are not always easy to discern or apply.

Prior apportionments are of little help. Missouri was divided into ten districts under the 1970 census. Legislative debate has centered on where to eliminate a district. The old plan, therefore, is of little help. Further-

more, that plan was drafted by a court, reducing its usefulness for reflecting legislative intent.[12]

One historical practice is that of not bisecting rural counties. Although this goal is secondary to population equality, Kirkpatrick v. Preisler, 394 U.S. at 533-34, we feel we can reasonably adhere to this practice. Respecting political subdivisions is a proper judicial approach to apportionment. Skolnick v. State Electoral Board, 336 F. Supp. at 843.

We are also mindful of the admonition of the Supreme Court in Kirkpatrick v. Preisler, 394 U.S. at 533-34: "[W]e do not find legally acceptable the argument that variances are

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[12]The court did, however, base its plan on one which had been enacted by the legislature but was found unconstitutional. Preisler v. Secretary of State, 341 F. Supp. at 1161.

justified if they necessarily result from a State's attempt to avoid fragmenting political subdivisions by drawing congressional districg lines along existing county,municipal, or other political subdivision boundaries." However, we have attempted to not disturb county boundaries except where necessary to achieve approximate equality of population, because all of the evidence adduced in the case was that the splitting of counties can cause innumerable administrative problems and additional costs in holding elections, along with confusion among voters in the split counties. While we read the Supreme Court cases as being basically concerned with population and as demanding a population distribution as near to the quotient as is practicably possible under the prevailing circumstances, we do believe that minor deviations based

on preserving definitive county and political subdivisions are permissible within very narrow limits.

We also note that historically the City of St. Louis has been divided into two districts. We realize that until the 1980 census, the official population of the City of St. Louis was greater than that necessary for one congressional district. However, in the past both districts in the City of St. Louis extended into St. Louis County, indicating that more than numerical necessity caused the division. Legislative proposals conflicted on whether to divide the City of St. Louis. This is unfortunate, because whether or not the city is divided has almost no ramifications on the rest of the plan, and therefore if legislative proposals had been in agreement we could have adopted

the approach in these proposals. Because the proposals conflict on this issue, we rely on the previous state policy of dividing the City of St. Louis. We chose as the dividing line a "natural" boundary, an interstate highway near the center of the city.[13]

We realize that we could be criticized for dividing the City of St. Louis in light of its population. The city's population is 453,085, which is 93,213 less than enough for one district. If the city were not divided, it would have 83% of the population of the district in which it is located. Dividing the City of St. Louis has given it a minority of the population in two districts (48% in the First and 35% in the Third). Arguably, its vote has been diluted. Nevertheless, we are not interested in preserving or diluting a particular area's strength. We have

divided the City of St. Louis because of the prior state policy of doing so.

2. Other policies

Because state policies as to apportionment are largely inconclusive, we are guided primarily by equality of population and compactness.We have given consideration to the expressions of political and civic bodies and individuals which have been brought to the attention of this court. Of course, sentiment may conflict within a community

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[13]It is ironic that the dissent bases its plan on a desire to salvage the present districts, p. 27, par. 2, post, but it does not salvage that part of the plan which divides the City of St. Louis.

and between communities, limiting the usefulness of such expressions.

The divergent interests which are most directly reflected in geographic distributions are those between rural and urban areas. We do not mean to suggest that all rural interests are identical; rather, we believe that the differences among various rural interests are less than the differences between any rural interest and an urban interest. These varied interests are secondary to the compactness requirement of the Missouri Constitution. Indeed, grouping of urban interests is to some extent necessary to meet the compactness requirement.

Census figures show that the population of the St. Louis Standard Metropolitan Statistical Area is 1,788,504, or 149,610 more than enough to completely fill three districts. The

population of the Kansas City Standard Metropolitan Statistical Area is 884,502, or 338,204 more than enough for one district, and 208,094 less than enough to completely fill two districts. There would be no reason to have fewer than four completely urban districts, or 44.4 percent of the districts. The urban population of Missouri is 54.4 percent of the state's population, and five urban districts would give the urban areas 55.6 percent of the representatives.

D. Summary

Our criteria in reapportionment are, in order of importance: (1) achieving population equality, (2) drawing compact and contiguous districts, and (3) implementing state policies on

apportionment, including not bisecting rural counties.

VI. Conclusion

We regret that we were unable to reach a unanimous decision. However, the plan espoused by our esteemed brother does not comport with the federal constitutional requirement of population equality and does not appear to comply with the Missouri constitutional requirement of compactness. We therefore adopt the plan appended to this opinion and marked "Appendix A." The 1980 census population figures of the judicially approved congressional districts are as follows:

UNITED STATES CONGRESSIONAL DISTRICTS

DISTRICT	POPULATION	VARIANCE FROM IDEAL DISTRICT POPULATION	PERCENT
1	546,208	90	.02%
2	546,039	259	.05%
3	546,102	196	.04%
4	546,637	339	.06%
5	546,882	584	.11%
6	546,614	316	.06%
7	545,921	377	.07%
8	546,112	186	.03%
9	546,171	127	.02%
State Population	4,916,686		

Ideal district population: 546,298

Largest district: District 5 546,882

Smallest district: District 7 545,921

Average percent variance of districts from ideal size: .05%

Variance between smallest and largest district: .18%

For the foregoing reasons, it is ORDERED, ADJUDGED, AND DECLARED that the congressional apportionment set forth in Preisler v. Secretary of State, 341 F. Supp. 1158 (W.D. Mo. 1972), is unconstitutional. It is further

ORDERED AND ADJUDGED that congressional election processes and congressional primary and general elections in 1982 and thereafter be conducted in and from the congressional districts established in this judgment and by Appendix A unless and until a timely new congressional redistricting act enacted by the State of Missouri takes effect.

In the event there is a conflict in Appendix A between, on the one hand, the census tract and county descriptions, and, on the other, the boundary lines as shown on the appended maps, the maps shall control. In particular, the line between the First and Third district is the middle of the present loctation of Interstate Highway 44, and after it reaches Interstate Highway 55 in the eastern part of the city, the center of Interstate Highway 55 is the dividing line. The State of Missouri Office of Administration shall provide the Secretary of State with maps which detail the maps set forth in Appendix A. It is further

ORDERED AND ADJUDGED that this court retain jurisdiction to implement, enforce, and amend this judgment as

shall be meet and just and in accordance with the 1980 census figures.

Floyd R. Gibson
Senior United States Circuit Judge
United States Court of Appeals
for the Eighth Circuit

Scott O. Wright
United States District Judge
United States District Court
for the Western District of Missouri

Dated this ____ day of
January, 1982.

WANGELIN, Chief District Judge, dissenting.

I respectfully dissent;

The 1980 census revealed that Missouri's population growth failed to keep up with national population growth and consequently Missouri's Congressional delegation was reduced from ten seats to nine. This failure to keep up with national population growth, and in some areas the actual decline in population, was most pronounced in the presently constituted first, second and third districts. I cannot concur with a redistricting plan that rewards areas for loss of population at the expense of areas that have not suffered such dramatic demographic declines. Rather, I would adopt the provisions of the

First Extraordinary Session Senate Substitute for Senate Committee Substitute for House Bill No. 1 [hereinafter the Plan], which is substantially the same as the Dirk Plan offered in the regular session, for the following reasons.

First, the Plan comports with the law as laid down in Preisler v. Secretary of Missouri, 341 F.Supp. 1158 (W.D. Mo. 1972), and gives consideration to the salvageable portions of the districts created by that decision.

Second, the Plan splits only St. Louis and Jackson Counties 1/. and does not split the City of St. Louis.

1/. These are the only two counties in Missouri that must be split since their individual population exceeds the population total necessary (546,298) to make one congressional district.

The majority plan not only splits these two counties and others, but also divides the City of St. Louis--an area which has lost population and does not contain the requisite population to constitute even one congressional district. Efforts to give voters in the City of St. Louis input in representation of other areas in more than one district would amount to rewarding the City for its population decline.

The suggestion that St. Charles and Jefferson Counties are part of the St. Louis metropolitan area and should therefore be drawn into overwhelmingly urban districts ignores the fact that population increases in those counties were primarily the result of popular flight from the "St. Louis metropolitan area."

To award multiple representation to the City of St. Louis and one-third of Missouri's congressional delegation to the "St. Louis metropolitan area," is nnot only unjust political compensation for an area of dwindling population but confounds the principles of representative government and the common sense application of the legal precepts which bind this panel.

The first district shall be composed of all of St. Louis City and the following United States Census Tracts in St. Louis County: Nos. 2199, 2200, 2139, 2140, 2138, 2204.02, 2204.04, 2203, 2205, 2206.02, 2201 and 2202. Total population--543,314.

The second district shall be composed of the following United States Census Tracts in St. Louis County: Nos. 2106, 2105, 2118, 2119, 2104, 2120,

2121, 2122, 2123, 2124, 2125, 2117, 2116, 2115, 2126, 2129, 2128, 2127, 2137, 2136, 2135, 2134, 2130, 2114.02, 2131.01, 2133, 2114.01, 2131.02, 2151.01, 2151.04, 2132.01, 2132.02, 2150.01, 2151.03, 2151.02, 2150.03, 2150.02, 2153.01, 2152.01, 2153.02, 2148, 2149, 2147, 2146, 2144, 2145, 2143, 2159, 2157, 2156, 2155, 2154, 2165, 2158, 2162, 2164, 2163, 2161,2160, 2141, 2142, 2168, 2169, 2170, 2191, 2171, 2172, 2167, 2166, 2173, 2102, 2103, 2109.03, 2110, 2111, 2112, 2182, 2180.02, 2181, 2189, 2174, 2175, 2188, 2187, 2186, 2185, 2184, 2176, 2177.01, 2180.01, 2183 and 2190. Total population--543,053.

The third district shall be composed of the following counties: Jefferson, Ste. Genevieve, St. Francois, Perry, Madison, Iron, Boillinger, Cape

Girardeau, Scott, Stoddard, Wayne, Carter, Ripley, Butler, Dunklin, Pemiscot, New Madrid, and Mississippi. Total Population--547,819.

The fourth district shall be composed of the townships of Fort Osage, Sni-A-Bar, Van Buren, and Prairie in Jackson County, and the counties of Ray, Lafayette, Saline, Howard, Boone, Cooper, Pettis, Johnson, Cass, Bates, Henry, Benton, Morgan, Moniteau, Camden, Hickory, St. Clair, Vernon, and Barton. Total Population--548,028.

The firth district shall be composed of the Jackson County Townships of Kaw, Blue, Brooking, and Washington. Total Population--548,520.

The sixth district shall be composed of the following counties: Atchison, Nodaway, Woth, Harrison, Mercer, Putnam, Schuyler, Scotland, Adair, Sullivan, Grundy, Daviess,

DeKalb, Gentry, Andrew, Holt, Buchanan, Clinton, Caldwell, Livingston, Chariton, Linn, Macon, Randolph, Carroll, Clay, and Platte. Total Population--545,729.

The seventh district shall be composed of the following counties: Cedar Polk, Dallas, Wright, Webster, Greene, Dade, Jasper, Lawrence, Christian, Douglas, Ozark, Taney, Stone, Barry, McDonald, and Newton. Total Population--545,921.

The eighth district shall be composed of the following United States Census Tracts in St. Louis County: Nos. 2215, 2214.02, 2214.01, 2213.03, 2204.03, 2197, 2198, 2210, 2209, 2194, 2195, 2196, 2193, 2192, 2211, 2212.01, 2212.02, 2208,03, 2208.02, 2207.03, 2207.02, 2207.01, 2206.01, 2208.01, 2213.01, 2213.02, and the counties of Cole, Osage, Gasconade, Franklin, Miller, Washington, Crawford, Phelps,

Pulaski, Dent, Laclede, Texas, Shannon, Reynolds, Howell, and Oregon. Total Population--549,459.

The ninth district shall be composed of the following United States Census Tracts in St. Louis County: Nos. 2113.02, 2113.01, 2113.03, 2109.02, 2109.01, 2108.02, 2108.03, 2108.04, 2107, 2101, 2216, 2151.05, 2152.03, 2178.05, 2178.04, 2177.02, 2152.02, 2179.02, 2179.03, 2179.04, 2178.06, 2178.07, 2178.02, and the following counties: Clark, Lewis, Knox, Shelby, Marion, Monroe, Ralls, Pike, Audrain, Callaway, Montgomery, Lincoln, Warren and St. Charles. Total Population--545,601.

H. Kenneth Wangelin

United States District Judge

APPENDIX "A"

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MISSOURI

CENTRAL DIVISION

In Civil Actions No. 81-4144, 81-4180, 81-4196, and 81-4184, the court's redistricting plan for Missouri is set forth in words and figures, as follows:

CONGRESSIONAL DISTRICT NUMBER 1

Comprised of the following counties, townships, places, census tracts, block groups, blocks, and/or enumeration districts:

	1980 POPULATION
St. Louis County (part)	
Census Tract 2101	6,622
Census Tract 2102	6,899
Census Tract 2103	4,153
Census Tract 2104	4,191
Census Tract 2105	9,971
Census Tract 2106	7,513
Census Tract 2107	14,445
Census Tract 2108.02	14,620

Census Tract 2108.03	5,194
Census Tract 2108.04	7,065
Census Tract 2109.01	6,890
Census Tract 2117	4,559
Census Tract 2118	9,605
Census Tract 2119	5,593
Census Tract 2120	12,358
Census Tract 2121	9,279
Census Tract 2122	10,695
Census Tract 2123	5,627
Census Tract 2124	2,711
Census Tract 2125	5,427
Census Tract 2126	5,066
Census Tract 2127	9,779
Census Tract 2136	6,088
Census Tract 2137	7,352
Census Tract 2138	8,847
Census Tract 2139	2,874
Census Tract 2140	1,183
Census Tract 2141	1,971
Census Tract 2142	4,236
Census Tract 2143	4,803

Census Tract 2157	7,733
Census Tract 2158	7,546
Census Tract 2159	9,120
Census Tract 2160	2,363
Census Tract 2161	6,966
Census Tract 2162	9,010
Census Tract 2163	5,577
Census Tract 2164	5,576
Census Tract 2165	3,408
Census Tract 2167	4,529
Census Tract 2168	4,103
Census Tract 2169	2,823
Census Tract 2170	3,810
Census Tract 2171	1,372
Census Tract 2172	2,955
Census Tract 2173 (part)	
Jefferson Township (part)	
Brentwood (part)	
Block Group 1	521
Block Group 2	797
Block Group 3 (part)	
Blocks 301-302	63
Blocks 307-312	293
Block Group 4	997
St. Louis City (part)	
Census Tract 1034 (part)	
Block Group 1 (part)	

Blocks 117-118	63
Block Group 3 (part)	
Block 320	17
Census Tract 1036 (part)	
Block Group 1 (part)	
Blocks 104-120	277
Census Tract 1038 (part)	
Block Group 5 (part)	
Block 522	0
Census Tract 1039 (part)	
Block Group 1	381
Block Group 2	407
Block Group 3 (part)	
Blocks 307-324	466
Blocks 344-348	87
Census Tract 1041	3,462
Census Tract 1042	4,325
Census Tract 1045	2,817
Census Tract 1051	4,286
Census Tract 1052	2,871
Census Tract 1053	4,013
Census Tract 1054	3,564
Census Tract 1055	6,296
Census Tract 1061	5,854
Census Tract 1062	4,129
Census Tract 1063	5,346
Census Tract 1064	4,863

Census Tract 1065	5,020
Census Tract 1066	4,353
Census Tract 1067	5,847
Census Tract 1071	1,272
Census Tract 1072	2,779
Census Tract 1073	8,902
Census Tract 1074	6,112
Census Tract 1075	5,550
Census Tract 1076	3,845
Census Tract 1077	5,700
Census Tract 1081	4,144
Census Tract 1082	3,154
Census Tract 1083	2,684
Census Tract [illegible]	1,348
Census Tract 1085	1,069
Census Tract 1096	5,846
Census Tract 1097	7,592
Census Tract 1101	5,619
Census Tract 1102	5,254
Census Tract 1103	5,092
Census Tract 1104	5,046
Census Tract 1105	4,103

Census Tract 1111	4,341
Census Tract 1112	4,517
Census Tract 1113	3,869
Census Tract 1114	4,625
Census Tract 1115	2,909
Census Tract 1121	4,055
Census Tract 1122	4,017
Census Tract 1123	4,345
Census Tract 1124	4,487
Census Tract 1135 (part)	
Block 2 (part	
Block 209	91
Block 5 (part)	
Blocks 503-505	125
Block 521	186
Block 6 (part)	
Block 610	0
Blocks 620-623	98
Census Tract 1171 (part)	
Block Group 1 (part)	
Blocks 101-102	242
Block Group 4 (part)	
Blocks 405-406	0
Census Tract 1172 (part)	
Block Group 1 (part)	
Blocks 101-105	1,098
Block 119	0
Block Group 7 (part)	
Blocks 705-706	515
Block 716	0
Census Tract 1173 (part)	

Block Group 1 618	
Block Group 3 (part)	
Blocks 317-318	196
Block 320	23
Block Group 4 (part)	
Block 423	0
Block Group 6	1,443
Block Group 7	844
Census Tract 1181	2,872
Census Tract 1184	1,466
Census Tract 1185	1,437
Census Tract 1186	3,364
Census Tract 1191	6,303
Census Tract 1192	2,624
Census Tract 1193	3,829
Census Tract 1201	2,040
Census Tract 1202	2,193
Census Tract 1203	3,240
Census Tract 1211	4,806
Census Tract 1212	3,989
Census Tract 1213	2,702
Census Tract 1214	344
Census Tract 1221	1,469
Census Tract 1222 (part)	
Block Group 1 (part)	
Block 105	0

Block 114	3
Blocks 127-140	5
Blocks 150-153	0
Block Group 2	4
Block Group 3	85
Census Tract 1224 (part)	
Block Group 2	13
Block Group 3	50
Block Group 4	2,487
Block Group 5	310
Block Group 6	2,032
Census Tract 1231 (part)	
Block Group 1	183
Block Group 2	78
Block Group 3 (part)	
Blocks 301-302	0
Block 317	178
Census Tract 1232 (part)	
Block Group 1	986
Block Group 2 (part)	
Blocks 202-203	31
Blocks 220-221	71
Blocks Group 3 (part)	
Blocks 305-306	116
Block 316	59
Block Group 4	419
Census Tract 1234 (part)	
Block Group 2	120
Block Group 3 (part)	
Block 301	7
Block 305	0
Block 331	0
Census Tract 1255	2,323
Census Tract 1256	1,127
Census Tract 1257	3,340

Census Tract 1266	4,620
Census Tract 1267	3,205
TOTAL	546,208

CONGRESSIONAL DISTRICT NUMBER 2

Comprised of the following counties, townships, places, census tracts, block groups, blocks, and/or enumeration districts:

	1980 POPULATION
St. Louis County (part)	
Census Tract 2101	6,622
St. Charles County (part)	
Census Tract 3102	4,744
Census Tract 3103	9,475
Census Tract 3104	2,667
Census Tract 3105	7,977
Census Tract 3106	7,941
Census Tract 3107	5,538
Census Tract 3108	4,959
Census Tract 3109	4,487
Census Tract 3110	5,074
Census Tract 3112	12,323
St. Louis County (part)	
Census Tract 2109.02	12,736
Census Tract 2109.03	9,427
Census Tract 2110	9,352

Census Tract 2111	12,883
Census Tract 2112	10,149
Census Tract 2113.01	8,330
Census Tract 2113.02	6,836
Census Tract 2113.03	14,978
Census Tract 2114.01	5,158
Census Tract 2114.02	2,019
Census Tract 2115	4,586
Census Tract 2116	7,800
Census Tract 2128	4,744
Census Tract 2129	5,539
Census Tract 2130	856
Census Tract 2131.02	3,206
Census Tract 2132.01	7,467
Census Tract 2132.02	7,459
Census Tract 2133	9,015
Census Tract 2134	8,654
Census Tract 2135	5,876
Census Tract 2144	6,148
Census Tract 2145	3,678
Census Tract 2146	9,898
Census Tract 2147	8,311

Census Tract 2148	6,578
Census Tract 2149	6,548
Census Tract 2150.01	3,016
Census Tract 2150.02	6,757
Census Tract 2150.03	4,662
Census Tract 2151.01	10,145
Census Tract 2151.02	5,194
Census Tract 2151.03	3,027
Census Tract 2151.04	9,553
Census Tract 2151.05	1,999
Census Tract 2152.01	6,533
Census Tract 2152.02	6,444
Census Tract 2152.03	9,994
Census Tract 2153.01	4,267
Census Tract 2153.02	3,463
Census Tract 2154	5,666
Census Tract 2155	5,055
Census Tract 2156	5,198
Census Tract 2166	2,884
Census Tract 2173 (part) Jefferson Township (part) Brentwood (part) Block Group 3 (part) Blocks 303-306	485

Census Tract 2174	4,523
Census Tract 2175	5,925
Census Tract 2176	7,786
Census Tract 2177.01	4,362
Census Tract 2177.02	7,231
Census Tract 2178.02	8,694
Census Tract 2178.04	9,775
Census Tract 2178.05	7,512
Census Tract 2178.06	5,955
Census Tract 2178.07	7,124
Census Tract 2179.02	10,567
Census Tract 2179.03	8,684
Census Tract 2179.04	7,042
Census Tract 2180.01	7,916
Census Tract 2180.02	5,361
Census Tract 2181	3,279
Census Tract 2182	4,505
Census Tract 2183	4,408
Census Tract 2184	9,080
Census Tract 2185	4,985
Census Tract 2186	2,848
Census Tract 2187	1,728

Census Tract 2188	6,035
Census Tract 2189	6,098
Census Tract 2193 (part)	
Jefferson Township (part)	
Webster Groves (part)	
Block Group 2 (part)	
Blocks 204-216	616
Block Group 3	699
Census Tract 2214.02	9,447
Census Tract 2215	8,777
Census Tract 2216	8,521
	546,039

CONGRESSIONAL DISTRICT NUMBER 3

Comprised of the following counties, townships, places, census tracts, block groups, blocks, and/or enumeration districts:

	1980 POPULATION
Jefferson County	146,183
St. Louis County (part)	
Census Tract 2190	1,355
Census Tract 2191	4,417
Census Tract 2192	2,715
Census Tract 2193 (part)	
Jefferson Township (part)	
Webster Groves (part)	
Block Group 1	764
Block group 2 (part)	
Blocks 201-203	186
Census Tract 2194	5,941
Census Tract 2195	6,538
Census Tract 2196	5,071

Census Tract 2197	6,502
Census Tract 2198	8,264
Census Tract 2199	6,655
Census Tract 2200	9,546
Census Tract 2201	9,200
Census Tract 2202	7,492
Census Tract 2203	1,743
Census Tract 2204.02	10,557
Census Tract 2204.03	9,885
Census Tract 2204.04	12,343
Census Tract 2205	13,860
Census Tract 2206.01	5,440
Census Tract 2206.02	5,947
Census Tract 2207.01	3,111
Census Tract 2207.02	4,380
Census Tract 2207.03	3,269
Census Tract 2208.01	6,129
Census Tract 2208.02	5,628
Census Tract 2208.03	5,337
Census Tract 2209	2,934
Census Tract 2210	3,930
Census Tract 2211	1,851

Census Tract 2212.01	2,248
Census Tract 2212.02	5,955
Census Tract 2213.01	7,541
Census Tract 2213.02	6,742
Census Tract 2213.03	8,640
Census Tract 2214.01	5,748
St. Louis City (part)	
Census Tract 1011	3,270
Census Tract 1012	3,756
Census Tract 1013	4,966
Census Tract 1014	3,447
Census Tract 1015	4,116
Census Tract 1018	4,260
Census Tract 1018.99	50
Census Tract 1021	3,035
Census Tract 1022	7,127
Census Tract 1023	2,274
Census Tract 1024	2,648
Census Tract 1025	2,248
Census Tract 1031	3,621
Census Tract 1034 (part)	
Block Group 1 (part)	
Blocks 101-116	970
Block Group 2	963

Block Group 3 (part)	
Block 301	120
Block 319	156
Block 321	49
Census Tract 1036 (part)	
Block Group 1 (part)	
Block 121	96
Block Group 2	470
Block Group 3	864
Census Tract 1037	3,171
Census Tract 1038 (part)	
Block Group 1	795
Block Group 2	961
Block Group 3	749
Block Group 4	912
Block Group 5 (part)	
Blocks 506-521	684
Block 523	52
Block Group 6	316
Census Tract 1039 (part)	
Block Group 3 (part)	
Block 343	31
Census Tract 1131	4,385
Census Tract 1134	1,185
Census Tract 1135 (part)	
Block Group 1	142
Block Group 2 (part)	
Blocks 201-208	662
Block Group 3	716
Block Group 4	657
Block Group 5 (part)	
Blocks 509-511	179
Blocks 522-524	210
Block Group 6 (part)	
Blocks 607-608	87

Census Tract 1141	9,590
Census Tract 1142	5,569
Census Tract 1143	6,449
Census Tract 1151	3,942
Census Tract 1152	3,172
Census Tract 1153	6,358
Census Tract 1154	3,327
Census Tract 1155	6,331
Census Tract 1156	6,116
Census Tract 1157	4,390
Census Tract 1161	3,338
Census Tract 1162	5,937
Census Tract 1163	7,169
Census Tract 1164	5,379
Census Tract 1165	5,295
Census Tract 1171 (part)	
Block Group 1 (part)	
Blocks 103-109	624
Block Group 2	672
Block Group 3	764
Block Group 4	0
Census Tract 1172 (part)	
Block Group 1 (part)	
Blocks 108-109	439
Block Group 2	874
Block Group 3	954
Block Group 4	1,255

Block Group 5	1,406
Block Group 6	1,411
Block Group 7 (part)	
Blocks 701-702	223
Census Tract 1173 (part)	
Block Group 3 (part)	
Blocks 301-307	470
Block 319	30
Block 321	103
Block Group 4 (part)	
Blocks 407-422	606
Block 424	171
Census Tract 1174	5,576
Census Tract 1222 (part)	
Block Group 1 (part)	
Blocks 102-103	0
Blocks 109-113	0
Blocks 116-124	0
Block 154	9
Census Tract 1224 (part)	
Block Group 1	0
Census Tract 1231 (part)	
Block Group 3 (part)	
Blocks 304-307	573
Blocks 318-320	278
Block Group 4	1,255
Block Group 5	270
Block Group 6	1,230
Block Group 7	1,280
Census Tract 1232 (part)	
Block Group 2 (part)	
Block 201	0
Block 205	0
Blocks 207-210	76
Block 219	0
Block Group 3 (part)	
Blocks 301-302	268
Block 317	2

Block Group 5	835
Census Tract 1233	3,672
Census Tract 1234 (part)	
Block Group 1	15
Block Group 3 (part)	
Blocks 312-321	289
Block 332	106
Block Group 4	469
Block Group 5	372
Block Group 6	524
Block Group 7	296
Block Group 8	238
Census Tract 1235	0
Census Tract 1241	6,287
Census Tract 1242	4,526
Census Tract 1243	5,209
Census Tract 1246	2,561
TOTAL	546,102

CONGRESSIONAL DISTRICT NUMBER 4

Comprised of the following counties, townships, places, census tracts, block groups, blocks, and/or enumeration districts:

	1980 POPULATION
Barton County	11,292
Bates County	15,873
Benton County	12,183
Camden County	20,017
Cass County	51,029
Cole County	56,663
Henry County	19,672
Hickory County	6,367
Jackson County (part)	
Census Tract 113 (part)	
Blue Township (part)	
Independence (part)	
Block Group 1 (part)	
Blocks 116-136	1,800
Census Tract 114.01 (part)	
Blue Township (part)	
Independence (part)	
Block Group 1 (part)	
Blocks 101-102	7
Blocks 115-117	241
Block Group 9	4,205
Census Tract 114.03 (part)	

Blue Township (part)	
Independence (part)	
Block Group 1	2,706
Block Group 2	942
Block Group 3	
Blocks 301-308	373
Blocks 313-324	2,730
Block Group 9	2,106
Census Tract 114.04	2,495
Census Tract 135 (part)	
Prairie Township (part)	
Remainder of Township	184
Census Tract 138	3,870
Census Tract 139	5,889
Census Tract 140	7,243
Census Tract 141.01	5,050
Census Tract 141.02	11,825
Census Tract 141.03	8,188
Census Tract 142.02	197
Census Tract 145 (part)	
Blue Township (part)	
Independence (part)	
Block Group 9 (part)	
Block 907	1
Block 918	45
Sni-A-Bar Township (part)	508
Census Tract 147	4,005
Census Tract 148.01	560
Census Tract 148.02	735

Census Tract 149	8,351
Census Tract 150 (part)	
Fort Osage Township (part)	
Buckner (part)	1,133
Levasy (part)	165
Census Tract 151 (part)	
Blue Township (part)	
Independence (part)	
Block Group 9	288
Sugar Creek (part)	
Block Group 9 (part)	
Block 901	28
Block 908	34
Blocks 910-914	27
Block 984	0
Block 986	23
Remainder of Township (part)	
Block Group 2	46
Block Group 9 (part)	
Blocks 901-924	335
Blocks 926-954	3,872
Blocks 985-989	182
Johnson County	39,059
Laclede County	24,323
Lafayette County	29,925
Maries County	7,551
Miller County	18,532
Moniteau County	12,068
Morgan County	13,807
Pettis County	36,378
Pulaski County	42,011

St. Clair County	8,622
Texas County	21,070
Vernon County	19,806
TOTAL	546,637

CONGRESSIONAL DISTRICT NUMBER 5

Comprised of the following counties, townships, places, census tracts, block groups, blocks, and/or enumeration districts:

	1980 POPULATION
Jackson County (part)	
Census Tract 1	0
Census Tract 2	50
Census Tract 3	2,025
Census Tract 4	811
Census Tract 5.01	182
Census Tract 5.02	1,263
Census Tract 6	4,361
Census Tract 7	4,023
Census Tract 8	4,131

Census Tract 9	3,632
Census Tract 10	3,516
Census Tract 11	1,948
Census Tract 12	590
Census Tract 13	1,619
Census Tract 14	816
Census Tract 15	1,437
Census Tract 16	1,988
Census Tract 17	2,746
Census Tract 18	9,958
Census Tract 19	3,943
Census Tract 20	2,315
Census Tract 21	4,886
Census Tract 22	3,589
Census Tract 23	2,113
Census Tract 24	1,399
Census Tract 25	1,777
Census Tract 26	28
Census Tract 27	10
Census Tract 28.01	80
Census Tract 28.02	69
Census Tract 29	1,212

Census Tract 30	2,363
Census Tract 31	175
Census Tract 32	1,059
Census Tract 33	1,543
Census Tract 34	3,956
Census Tract 35.01	1,723
Census Tract 35.02	916
Census Tract 36.01	1,212
Census Tract 36.02	2,218
Census Tract 37	2,207
Census Tract 38	2,181
Census Tract 39	1,716
Census Tract 40	1,770
Census Tract 41	989
Census Tract 42	1,642
Census Tract 43	2,925
Census Tract 44	1,030
Census Tract 45	969
Census Tract 46	3,162
Census Tract 47	1,201
Census Tract 48	3,050
Census Tract 49	2,686

Census Tract 50	3,114
Census Tract 51	2,256
Census Tract 52	2,623
Census Tract 53	2,398
Census Tract 54	2,162
Census Tract 55	1,927
Census Tract 56.01	2,974
Census Tract 56.02	3,138
Census Tract 57	3,696
Census Tract 58.01	3,880
Census Tract 58.02	5,045
Census Tract 59.01	954
Census Tract 59.02	2,750
Census Tract 60	2,480
Census Tract 61	4,662
Census Tract 62	2,211
Census Tract 63	3,414
Census Tract 64	2,773
Census Tract 65	1,927
Census Tract 66	2,185
Census Tract 67	2,928
Census Tract 68	1,004

Census Tract 69	1,891
Census Tract 70	3,209
Census Tract 71	3,178
Census Tract 72	2,149
Census Tract 73	4,270
Census Tract 74	4,678
Census Tract 75	4,363
Census Tract 76	4,307
Census Tract 77	2,862
Census Tract 78.01	1,094
Census Tract 78.02	3,071
Census Tract 79	5,682
Census Tract 80	4,388
Census Tract 81	3,418
Census Tract 82	3,219
Census Tract 83	2,721
Census Tract 84	3,010
Census Tract 85	3,581
Census Tract 86	5,871
Census Tract 87	3,963
Census Tract 88	5,523
Census Tract 89	2,828

Census Tract 90	5,623
Census Tract 91	4,269
Census Tract 92	3,137
Census Tract 93	2,794
Census Tract 94	5,134
Census Tract 95	3,885
Census Tract 96	2,019
Census Tract 97	1,140
Census Tract 98	3,954
Census Tract 99	2,714
Census Tract 100.01	1,626
Census Tract 100.02	2,973
Census Tract 101.03	2,832
Census Tract 101.04	777
Census Tract 101.05	2,815
Census Tract 101.06	2,715
Census Tract 102.01	2,178
Census Tract 102.03	5,084
Census Tract 102.04	4,022
Census Tract 103.01	655
Census Tract 103.02	4,221
Census Tract 104.01	1,441

Census Tract 104.02	771
Census Tract 105	5,835
Census Tract 106	3,428
Census Tract 107.01	1,402
Census Tract 107.02	2,415
Census Tract 108.01	1,405
Census Tract 108.02	4
Census Tract 109.01	2,583
Census Tract 109.02	900
Census Tract 110	5,847
Census Tract 111	4,170
Census Tract 112	3,891
Census Tract 113 (part)	
Blue Township (part)	
Independence (part)	
Block Group 1 (part)	
Blocks 102-109	1,475
Block Group 2	1,391
Block Group 3	542
Census Tract 114.01 (part)	
Blue Township (part)	
Independence (part)	
Block Group 1 (part)	
Blocks 104-114	984
Blocks 118-130	1,764
Census Tract 114.03 (part)	
Blue Township (part)	
Independence (part)	
Block Group 3 (part)	

Blocks 310-311	176
Census Tract 115	6,614
Census Tract 116	5,824
Census Tract 117	4,926
Census Tract 118	5,638
Census Tract 119	4,141
Census Tract 120	3,776
Census Tract 121	6,387
Census Tract 122	6,380
Census Tract 123	3,533
Census Tract 124	4,401
Census Tract 125.01	3,724
Census Tract 125.02	3,079
Census Tract 125.03	3,140
Census Tract 126	5,197
Census Tract 127.01	7,344
Census Tract 127.02	636
Census Tract 128.01	8,713
Census Tract 128.02	3,371
Census Tract 129.01	7,263
Census Tract 129.02	5,406
Census Tract 130.01	88

Census Tract 130.02	2,266
Census Tract 130.03	5,028
Census Tract 131	3,582
Census Tract 132.01	7,451
Census Tract 132.02	3,011
Census Tract 133.01	4,404
Census Tract 133.02	7,751
Census Tract 133.03	5,168
Census Tract 134.01	3,065
Census Tract 134.02	5,629
Census Tract 134.04	113
Census Tract 134.05	1,369
Census Tract 134.06	4,146
Census Tract 135 (part)	
Prairie Township (part)	
Greenwood	1,315
Lee's Summitt (part)	1,743
Washington Township (part)	212
Census Tract 136	4,917
Census Tract 137.01	1,078
Census Tract 137.02	3,440
Census Tract 137.03	5,266
Census Tract 137.04	3,985
Census Tract 142.01	3,335

Census Tract 143	3,091
Census Tract 144	1,704
Census Tract 145 (part)	
Blue Township (part)	
Independence (part)	
Block Group 1	2,637
Block Group 9 (part)	
Blocks 902-906	103
Blocks 911-917	726
Blocks 987-989	1,038
Brooking Township (part)	
Kansas City (part)	28
Census Tract 146.01	6,486
Census Tract 146.02	7,197
Census Tract 151 (part)	
Blue Township (part)	
Independence (part)	
Block Group 1	0
Sugar Creek (part)	
Block Group 9 (part)	
Block 915	0
Blocks 919-920	16
Blocks 925-926	7
Remainder of Township (part)	
Block Group 9 (part)	
Block 925	4
Blocks 955-956	2
TOTAL	546,882

CONGRESSIONAL DISTRICT NUMBER 6

Comprised of the following counties, townships, places, census tracts, block groups, blocks, and/or enumeration districts:

	1980 POPULATION
Andrew County	13,980
Atchison County	8,605
Buchanan County	87,888
Caldwell County	8,660
Carroll County	12,131
Chariton County	10,489
Clay County	136,488
Clinton County	15,916
Cooper County	14,643
Daviess County	8,905
DeKalb County	8,222
Gentry County	7,887
Grundy County	11,959
Harrison County	9,890
Holt County	6,882
Howard County	10,008

Jackson County (part)	
Census Tract 150 (part)	
Blue Township (part)	240
Fort Osage Township (part)	
Sibley	382
Remainder of Township	1,373
Linn County	15,495
Livingston County	15,739
Mercer County	4,685
Nodaway County	21,996
Platte County	46,341
Putnam County	6,092
Ray County	21,378
Saline County	24,919
Schuyler County	4,979
Sullivan County	7,434
Worth County	3,008
TOTAL	546,614

CONGRESSIONAL DISTRICT NUMBER 7

Comprised of the following counties, townships, places, census tracts, block groups, blocks, and/or enumeration districts:

	1980 POPULATION
Barry County	24,408
Cedar County	11,894
Christian County	22,402
Dade County	7,383
Dallas County	12,096
Douglas County	11,594
Greene County	185,302
Jasper County	86,958
Lawrence County	28,973
McDonald County	14,917
Newton County	40,555
Ozark County	7,961
Polk County	18,822
Stone County	15,587

Taney County	20,467
Webster County	20,414
Wright County	16,188
TOTAL	545,921

CONGRESSIONAL DISTRICT NUMBER 8

Comprised of the following counties, townships, places, census tracts, block groups, blocks, and/or enumeration districts:

	1980 POPULATION
Bollinger County	10,301
Butler County	37,693
Cape Girardeau County	58,837
Carter County	5,428
Crawford County	18,300
Dent County	14,517
Dunklin County	36,324
Franklin County (part) Census Tract 8011	6,514
Howell County	28,807
Iron County	11,084
Madison County	10,725
Mississippi County	15,726
New Madrid County	22,945
Oregon County	10,238
Pemiscot County	24,987
Perry County	16,784

Phelps County	33,633
Reynolds County	7,230
Ripley County	12,458
St. Francois County	42,600
Ste. Genevieve County	15,180
Scott County	39,647
Shannon County	7,885
Stoddard County	29,009
Washington County	17,983
Wayne County	11,277
TOTAL	546,112

CONGRESSIONAL DISTRICT NUMBER 9

Comprised of the following counties, townships, places, census tracts, block groups, blocks, and/or enumeration districts:

	1980 POPULATION
Adair County	24,870
Audrain County	26,458
Boone County	100,376
Callaway County	32,252
Clark County	8,493
Franklin County (part) Census Tract 8001	5,495
Census Tract 8002	6,731
Census Tract 8003	6,131
Census Tract 8004	8,743
Census Tract 8005	5,407
Census Tract 8006	9,105
Census Tract 8007	7,883
Census Tract 8008	5,417
Census Tract 8009	7,182
Census Tract 8010	2,625
Gasconade County	13,181

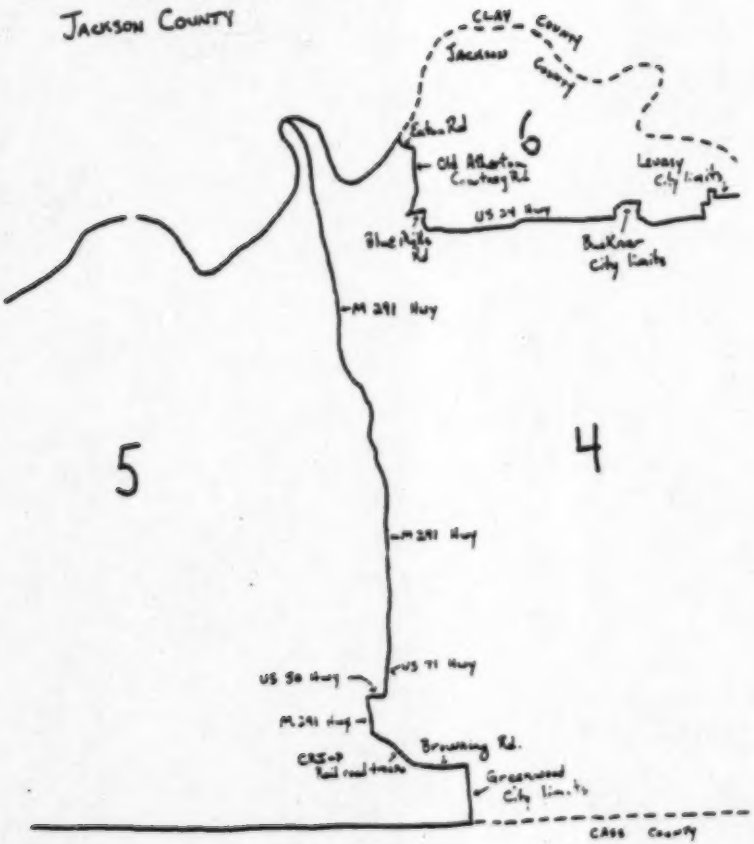
Knox County	5,508
Lewis County	10,901
Lincoln County	22,193
Macon County	16,313
Marion County	28,638
Monroe County	9,716
Montgomery County	11,537
Osage County	12,014
Pike County	17,568
Ralls County	8,911
Randolph County	25,460
St. Charles County (part)	
Census Tract 3101	4,364
Census Tract 3111	16,045
Census Tract 3113	11,325
Census Tract 3114	7,050
Census Tract 3115	729
Census Tract 3116	4,380
Census Tract 3117	8,711
Census Tract 3118	5,153
Census Tract 3119	6,521
Census Tract 3120	4,192

Census Tract 3121	4,464
Census Tract 3122	5,988
Scotland County	5,415
Shelby County	7,826
Warren County	14,900
TOTAL	546,171

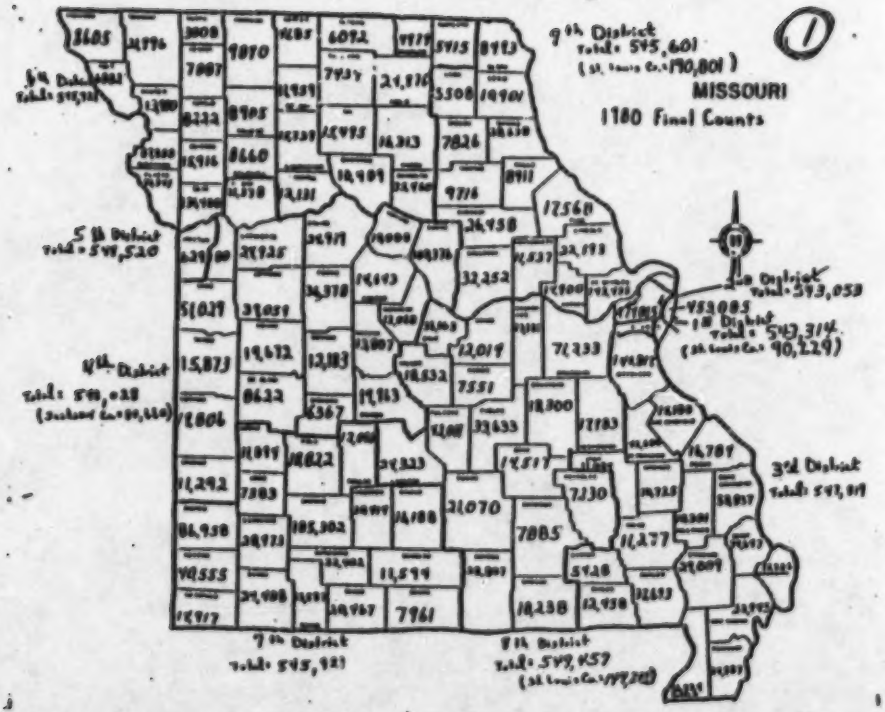
MISSOURI
1981
CONGRESSIONAL DISTRICTS
6
9
2
5
1
3
4
8
7

U.S.- Congressional Districts

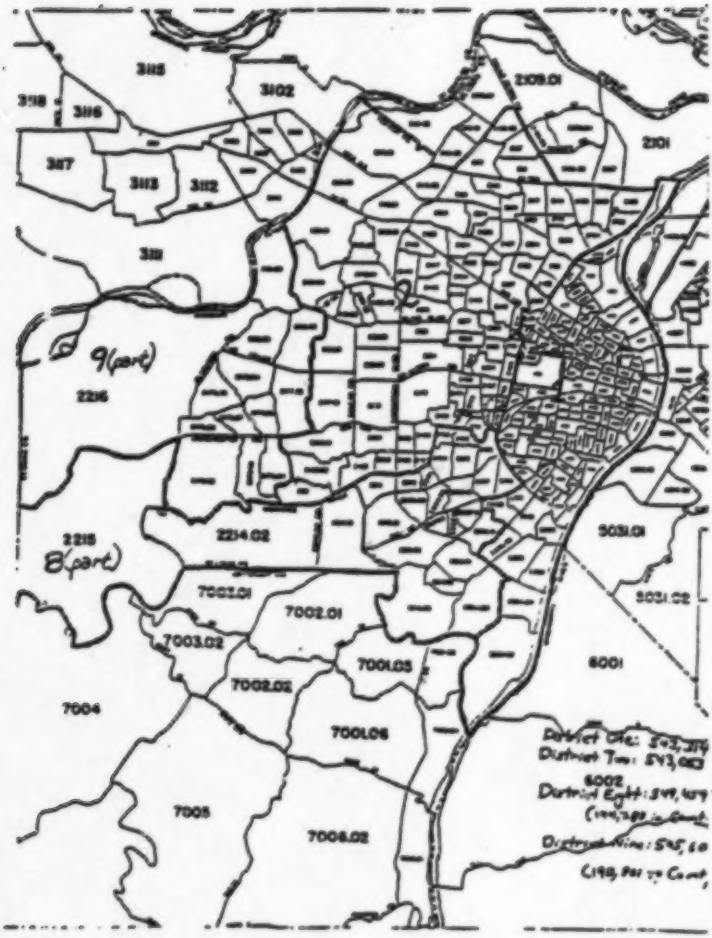
JACKSON COUNTY



St. Charles County
Route B
Dardenne Creek Rd
Route K
94 Bus
Portage/Cane Spring Twp line
Ehlmann Rd
Spencer Rd
Mexico Rd
Theale Rd
94 Bus
Hanseth (Muegge)
St Louis County
9
2
Hobb Ferry
I270
Ferguson/Airport Twp line
Ferguson City Limits
Malines Creek
Normandy/Hillsdale Twp line
Chamberlain Rd
University City Limits
1
St Louis City
Clayton Rd
Lacky Forest Dr
Brentwood
Manchester
Bus 94
I-44
Rock Hill
Hadley
Jefferson Twp Line
Berry Rd
Big Bend Rd
Meramec River
Boules Rd.
3
Jefferson County
US Congressional Districts
St Louis Area



(Discount Map)


3115
3102
2109.01
3116
3118
2101
3117
3113
3112
311
9(part)
2216
2214.02
2215
8(part)
5031.01
5031.02
7002.01
7002.01
7003.02
7001.05
6001
7002.02
7004
7001.06
7005
7006.02

(Diagram Map)

(Diagram Map)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SYDELL SHAYER, ET AL.,

Plaintiffs,

v.

HONORABLE JAMES C. KIRKPATRICK, Secretary of State of Missouri,

Defendant.

No. 81-4144-CV-C

CITY OF ST. LOUIS, ET AL.,

Intervenors.

and

ST. LOUIS REGIONAL COMMERCE AND GROWTH ASSOCIATION, ET AL.,

Intervenors.

WILLIAM OVERSCHMIDT, ET AL.,

Plaintiffs,

v.

HON. JAMES C. KIRKPATRICK, Secretary of State of Missouri,

Defendant

No. 81-4180-CV-C

MISSOURI STATE CONFERENCE OF BRANCHESOF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, INC., ET AL.,

Plaintiffs,

v.

HONORABLE CHRISTOPHER BOND, Governor, and HONORABLE JAMES C. KIRKPATRICK, Secretary of State of the State of Missouri,

Defendants.

No. 81-4196-CV-C

MISSOURI STATE CONFERENCE OF BRANCHES OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, INC., ET AL.,

Plaintiffs,

v.

HONORABLE CHRISTOPHER BOND, Governor, and HONORABLE JAMES C. KRIKPATRICK, Secretary of State of the State of Missouri,

Defendants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Adolph Schatzle, one of the plaintiffs named above, hereby appeals to the Supreme Court of the

United States from the judgment entered on January 7, 1982 redistricting the congressional districts in the State of Missouri.

This appeal is taken pursuant to 28 U.S.C. §1253.

/S/ John K. Roedel, Jr.
John K. Roedel, Jr.
Senniger, Powers, Leavitt and Roedel
611 Olive Street
St. Louis, Missouri 631k01
(314) 231-0109

Counsel for Plaintiff

PROOF OF SERVICE

I, John K. Roedel, Jr., a member to the bar of this court, hereby certify that all parties required to be served this Notice of Appeal have been served and ore particularly that I have his third day of February, 1982, deposited copies of this Notice of Appeal in a United States mailbox in St. Louis, Missouri with first-class postage prepaid addressed to the counsel of record for each of the parties listed below:

Sydell Shayer, Linda Claire McDaniel, Shirley Albert, Andi Cenedella, Esther Myers, and Ann Reed c/o Harold L. Fridkin, Esq., Linde, Thomson, Fairchild, Langworthy, Kohn & Van Dyke, P.O. Box 26010, Kansas City, MO 64196

Honorable Christopher Bond and Honorable James C. Kirkpatrick c/o Michael H. Finkelstein, Esq., Assistant Attorney General, P. O. Box 899, Jefferson City, MO 65102

City of St. Louis, Vincent C. Schoemehl, Jr. and Geraldine Osborn c/o James J. Wilson, Esq., Associate City Counselor, Room 314, City Hall, St. Louis, MO 63103

St. Louis Regional Commerce and Growth Association, James M. O'Flynn, and John H. Poelker c/o kCarroll J. Donohue, Esq., Husch, Eppenberger, Donohue, Elson & Cornfeld, 100 N. Broadway - Suite 1800, St. Louis, MO 63102

William Overschmidt, Brian Hall, Mickey Brown, George Engelback, Earl Heitman and Cecil Crutchfield c/o F. William McCalpin, Lewis, Rice, Tucker, Allen & Chubb, 611 Olive Street, #1400, St. Louis, MO 63101

Missouri State Conference of Branches of the National Association for the Advancement of Colored People, Inc., St. Louis Branch, NAACP, St. Louis County Branch, NAACP, Cape Girardeau Branch, NAACP, Festus-Crystal City Branch, NAACP, Hannibal Branch, NAACP, Malden Branch, NAACP, Mexico Branch, NAACP, Portageville Branch, NAACP, St. Charles Branch, NAACP, Fredda Witherspoon and James DeClue, Kansas City Branch, NAACP, St. Joseph Branch, NAACP, Jefferson City Branch, NAACP, Columbia Branch,

NAACP, Chilli-Cothe Branch, NAACP, Kenneth-Dunklin, NAACP, Marchall Branch, NAACP, Joplin Branch, NAACP, Dr. Fredda Witherspoon and Mr. Ommie L. Nelms c/o Donald A. MMcCullin, Esq., Wilson, Smith & McCullin, 4054 Lindell Blvd., St. Louis, MO 63108

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John K. Roedel, Jr.

FIRST EXTRAORDINARY SESSION

[PERFECTED]

HOUSE BILL NO. 1

81ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES RIBAUDO, GRIFFIN, HICKEY, VILLA, WILLIAMS (78), FAZZINO, COPELAND, DUNNING, DePASCO, BAKER, O'TOOLE, RAUCH, DAWSON, RUSSELL (6), WEBER, BRATKOWSKI, BROWN, McKAMEY, PARK, MARKWELL, GOWARD, YOUNGDAHL, HEARNES, PATTERSON, BURCH (135), AUER, HEDRICK, MARRIOTT, O'CONNOR, McBRIDE, GARRETT, EGAN, McCRACKEN, FOWLER (69), BRAUNGARDT, CREASON, ELLIS, FEIGENBAUM, CANTRELL, ECKHARDT, DOUGHERTY AND BOYKINS.

Read 1st time November 6, 1981 and 1000 copies ordered printed.

Read 2nd time November 7, 1981, and referred to the Committee on Congressional Reapportionment, November 7, 1981.

Reported from the Committee on Congressional Reapportionment November 17, 1981, with recommendation that the bill Do Pass, with House Committee Amendment No. 1.

Taken up for Perfection November 17, 1981.

Bill ordered Perfected and printed, as amended.

DOUGLAS W. BURNETT, Chief Clerk

2187

AN ACT

To repeal sections 128.020, 128.030, 128.204, 128.214, 128.224, 128.234, 128.244, 128.254, 128.264, 128.274, 128.284, 128.294, 128.304, 128.306, and 128.340, RSMo 1978, and to enact in lieu thereof eleven new sections relating to electoral districts and congressional districts.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section 1. Sections 128.020, 128.030, 128.204, 128.214, 128.224, 128.234, 128.244, 128.254, 128.264, 128.274, 128.284, 128.294, 128.304, 128.306, and 128.340, RSMo 1978, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 128.200, 128.210, 128.220, 128.230, 128.240, 128.250, 128.260, 128.270, 128.280, 128.290, and 128.300, to read as follows:

EXPLANATION—Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

128.200. The state of Missouri is hereby divided into nine congressional districts. The legal voters of each district shall elect one member of Congress of the United States.

128.210. The first district shall be composed of the following:

St. Louis County (part):

Census Tract 2122;

Census Tract 2123;

Census Tract 2127;

Census Tract 2128;

Census Tract 2136;

Census Tract 2137;

Census Tract 2138;

Census Tract 2139;

Census Tract 2140;

Census Tract 2141;

Census Tract 2142;

Census Tract 2150.02 (part):

Block 221;

Block 222;

Block 223;

Block 224;

Block 225;

Block 226;

Block 227;

Block 228;

Block 229;

Block 230; and

Block 232;

Census Tract 2152.01;

Census Tract 2152.02;

Census Tract 2153.01;

Census Tract 2153.02;

Census Tract 2154;
Census Tract 2155;
Census Tract 2156;
Census Tract 2157;
Census Tract 2158;
Census Tract 2159;
Census Tract 2160;
Census Tract 2161;
Census Tract 2162;
Census Tract 2163;
Census Tract 2164;
Census Tract 2165;
Census Tract 2166;
Census Tract 2167;
Census Tract 2168;
Census Tract 2169;
Census Tract 2170;
Census Tract 2171;
Census Tract 2172;
Census Tract 2173;
Census Tract 2174;
Census Tract 2175;
Census Tract 2176;
Census Tract 2185;
Census Tract 2186;
Census Tract 2187;
Census Tract 2188;
Census Tract 2189;
Census Tract 2190;
Census Tract 2191;
Census Tract 2192;
Census Tract 2193;
Census Tract 2194;

Census Tract 2195;
Census Tract 2196;
Census Tract 2197;
Census Tract 2198;
Census Tract 2208.01;
Census Tract 2208.02;
Census Tract 2209; and
Census Tract 2210; and
City of St. Louis (part):
Census Tract 1051;
Census Tract 1052;
Census Tract 1053;
Census Tract 1054;
Census Tract 1055;
Census Tract 1061;
Census Tract 1062;
Census Tract 1063;
Census Tract 1064;
Census Tract 1065;
Census Tract 1066;
Census Tract 1067;
Census Tract 1071;
Census Tract 1072;
Census Tract 1073;
Census Tract 1074;
Census Tract 1075;
Census Tract 1076;
Census Tract 1077;
Census Tract 1081;
Census Tract 1082;
Census Tract 1083;
Census Tract 1084;
Census Tract 1085;

Census Tract 1096;
Census Tract 1097;
Census Tract 1101;
Census Tract 1102;
Census Tract 1103;
Census Tract 1104;
Census Tract 1105;
Census Tract 1111;
Census Tract 1112;
Census Tract 1113;
Census Tract 1114;
Census Tract 1115;
Census Tract 1121;
Census Tract 1122;
Census Tract 1123;
Census Tract 1124;
Census Tract 1172;
Census Tract 1173;
Census Tract 1181;
Census Tract 1184;
Census Tract 1185;
Census Tract 1186;
Census Tract 1191;
Census Tract 1192;
Census Tract 1193;
Census Tract 1201;
Census Tract 1202;
Census Tract 1203;
Census Tract 1211;
Census Tract 1212;
Census Tract 1213;
Census Tract 1214;
Census Tract 1221;

Census Tract 1222;
Census Tract 1224;
Census Tract 1231 (part):
Block Group 1;
Block Group 2; and
Block Group 3;
Census Tract 1232;
Census Tract 1234 (part):
Block Group 1;
Block Group 2;
Block Group 3; and
Block Group 4;
Census Tract 1235;
Census Tract 1255;
Census Tract 1256;
Census Tract 1257;
Census Tract 1266; and
Census Tract 1267.

128.220. The second district shall be composed of the following:

St. Charles County;
St. Louis County (part):
Census Tract 2101;
Census Tract 2102;
Census Tract 2103;
Census Tract 2104;
Census Tract 2105;
Census Tract 2106;
Census Tract 2107;
Census Tract 2108.02;
Census Tract 2108.03;
Census Tract 2108.04;
Census Tract 2109.01;

Census Tract 2109.02;
Census Tract 2109.03;
Census Tract 2110;
Census Tract 2111;
Census Tract 2112;
Census Tract 2113.01;
Census Tract 2113.02;
Census Tract 2113.03;
Census Tract 2114.01;
Census Tract 2114.02;
Census Tract 2115;
Census Tract 2116;
Census Tract 2117;
Census Tract 2118;
Census Tract 2119;
Census Tract 2120;
Census Tract 2121;
Census Tract 2124;
Census Tract 2125;
Census Tract 2126;
Census Tract 2129;
Census Tract 2130;
Census Tract 2131.01;
Census Tract 2131.02;
Census Tract 2132.01;
Census Tract 2132.02;
Census Tract 2133;
Census Tract 2134;
Census Tract 2135;
Census Tract 2143;
Census Tract 2144;
Census Tract 2145;
Census Tract 2146;

Census Tract 2147;
Census Tract 2148;
Census Tract 2149;
Census Tract 2150.01;
Census Tract 2150.02 (part):
Block Group 1;
Block 201;
Block 202;
Block 203;
Block 206;
Block 207;
Block 208;
Block 209;
Block 210;
Block 211;
Block 212;
Block 217;
Block 218;
Block 219;
Block 220; and
Block 233;
Census Tract 2150.03;
Census Tract 2151.01;
Census Tract 2151.02;
Census Tract 2151.03;
Census Tract 2151.04;
Census Tract 2151.05; and
Census Tract 2152.03.

128.230. The third district shall be composed of the following:

Franklin County (part):
Census Tract 8001;
Census Tract 8002;

Census Tract 8003;
Census Tract 8004;
Census Tract 8005;
Census Tract 8006;
Census Tract 8007;
Census Tract 8008;
Census Tract 8009; and
Census Tract 8010;
St. Louis County (part):
Census Tract 2177.01;
Census Tract 2177.02;
Census Tract 2178.02;
Census Tract 2178.04;
Census Tract 2178.05;
Census Tract 2178.06;
Census Tract 2178.07;
Census Tract 2179.02;
Census Tract 2179.03;
Census Tract 2179.04;
Census Tract 2180.01;
Census Tract 2180.02;
Census Tract 2181;
Census Tract 2182;
Census Tract 2183;
Census Tract 2184;
Census Tract 2199;
Census Tract 2200;
Census Tract 2201;
Census Tract 2202;
Census Tract 2203;
Census Tract 2204.02;
Census Tract 2204.03;
Census Tract 2204.04;

Census Tract 2205;
Census Tract 2206.01;
Census Tract 2206.02;
Census Tract 2207.01;
Census Tract 2207.02;
Census Tract 2207.03;
Census Tract 2208.03;
Census Tract 2211;
Census Tract 2212.01;
Census Tract 2212.02;
Census Tract 2213.01;
Census Tract 2213.02;
Census Tract 2213.03;
Census Tract 2214.01;
Census Tract 2214.02;
Census Tract 2215; and
Census Tract 2216;
City of St. Louis (part):
Census Tract 1011;
Census Tract 1012;
Census Tract 1013;
Census Tract 1014;
Census Tract 1015;
Census Tract 1018;
Census Tract 1018.99;
Census Tract 1021;
Census Tract 1022;
Census Tract 1023;
Census Tract 1024;
Census Tract 1025;
Census Tract 1031;
Census Tract 1034;
Census Tract 1036;

Census Tract 1037;
Census Tract 1038;
Census Tract 1039;
Census Tract 1041;
Census Tract 1042;
Census Tract 1045;
Census Tract 1131;
Census Tract 1134;
Census Tract 1135;
Census Tract 1141;
Census Tract 1142;
Census Tract 1143;
Census Tract 1151;
Census Tract 1152;
Census Tract 1153;
Census Tract 1154;
Census Tract 1155;
Census Tract 1156;
Census Tract 1157;
Census Tract 1161;
Census Tract 1162;
Census Tract 1163;
Census Tract 1164;
Census Tract 1165;
Census Tract 1171;
Census Tract 1174;
Census Tract 1231 (part):
Block Group 4;
Block Group 5;
Block Group 6; and
Block Group 7;
Census Tract 1233;
Census Tract 1234 (part):

Block Group 5,
Block Group 6;
Block Group 7; and
Block Group 8;
Census Tract 1241;
Census Tract 1242;
Census Tract 1243; and
Census Tract 1246.

128.240. The fourth district shall be composed of the following:
Barton County;
Bates County;
Benton County;
Cass County;
Henry County;
Hickory County;
Howard County;
Jackson County (part):
[Census Tract 101.04;
Census Tract 101.05;
Census Tract 101.06;
Census Tract 102.04;]
Census Tract 109.01;
Census Tract 110;
Census Tract 111;
Census Tract 112;
Census Tract 113;
Census Tract 114.01;
Census Tract 114.03;
Census Tract 114.04;
Census Tract 115;
Census Tract 116;

Census Tract 117;
Census Tract 118;
Census Tract 119;
Census Tract 120;
Census Tract 121;
Census Tract 122;
Census Tract 123;
Census Tract 124;
Census Tract 125.01;
Census Tract 125.02;
Census Tract 125.03;
Census Tract 126;
Census Tract 127.01;
Census Tract 127.02;
Census Tract 128.01;
Census Tract 128.02;
[Census Tract 131;
Census Tract 132.01;
Census Tract 132.02;]
Census Tract 133.01;
Census Tract 133.02;
Census Tract 133.03;
Census Tract 134.01;
[Census Tract 134.02;]
Census Tract 134.04;
[Census Tract 134.05;]
Census Tract 134.06;
Census Tract 135;
Census Tract 136;
Census Tract 137.01;
Census Tract 137.02
Census Tract 137.03;
Census Tract 137.04;

Census Tract 138;
Census Tract 139;
Census Tract 140;
Census Tract 141.01;
Census Tract 141.02;
Census Tract 141.03;
Census Tract 142.01;
Census Tract 142.02;
Census Tract 143;
Census Tract 145;
Census Tract 146.01;
Census Tract 146.02;
Census Tract 147;
Census Tract 148.01;
Census Tract 148.02;
Census Tract 149;
Census Tract 150; and
Census Tract 151;
Johnson County;
Lafayette County;
Pettis County;
St. Clair County;
Saline County; and
Vernon County.

128.250. The fifth district shall be composed of the following:
Clay County;
Jackson County (part):
Census Tract 1;
Census Tract 2;
Census Tract 3;
Census Tract 4;
Census Tract 5.01;

Census Tract 5.02;
Census Tract 6;
Census Tract 7;
Census Tract 8;
Census Tract 9;
Census Tract 10;
Census Tract 11;
Census Tract 12;
Census Tract 13;
Census Tract 14;
Census Tract 15;
Census Tract 16;
Census Tract 17;
Census Tract 18;
Census Tract 19;
Census Tract 20;
Census Tract 21;
Census Tract 22;
Census Tract 23;
Census Tract 24;
Census Tract 25;
Census Tract 26;
Census Tract 27;
Census Tract 28.01;
Census Tract 28.02;
Census Tract 29;
Census Tract 30;
Census Tract 31;
Census Tract 32;
Census Tract 33;
Census Tract 34;
Census Tract 35.01;
Census Tract 35.02;

Census Tract 36.01;
Census Tract 36.02;
Census Tract 37;
Census Tract 38;
Census Tract 39;
Census Tract 40;
Census Tract 41;
Census Tract 42;
Census Tract 43;
Census Tract 44;
Census Tract 45;
Census Tract 46;
Census Tract 47;
Census Tract 48;
Census Tract 49;
Census Tract 50;
Census Tract 51;
Census Tract 52;
Census Tract 53;
Census Tract 54;
Census Tract 55;
Census Tract 56.01;
Census Tract 56.02;
Census Tract 57;
Census Tract 58.01;
Census Tract 58.02;
Census Tract 59.01;
Census Tract 59.02;
Census Tract 60;
Census Tract 61;
Census Tract 62;
Census Tract 63;
Census Tract 64;

Census Tract 65;
Census Tract 66;
Census Tract 67;
Census Tract 68;
Census Tract 69;
Census Tract 70;
Census Tract 71;
Census Tract 72;
Census Tract 73;
Census Tract 74;
Census Tract 75;
Census Tract 76;
Census Tract 77;
Census Tract 78.01;
Census Tract 78.02;
Census Tract 79;
Census Tract 80;
Census Tract 81;
Census Tract 82;
Census Tract 83;
Census Tract 84;
Census Tract 85;
Census Tract 86;
Census Tract 87;
Census Tract 88;
Census Tract 89;
Census Tract 90;
Census Tract 91;
Census Tract 92;
Census Tract 93;
Census Tract 94;
Census Tract 95;
Census Tract 96;

Census Tract 97;
Census Tract 98;
Census Tract 99;
Census Tract 100.01;
Census Tract 100.02;
Census Tract 101.03;
Census Tract 101.04;
Census Tract 101.05;
Census Tract 101.06;
Census Tract 102.01;
Census Tract 102.03;
Census Tract 102.04;
Census Tract 103.01;
Census Tract 103.02;
Census Tract 104.01;
Census Tract 104.02;
Census Tract 105;
Census Tract 106;
Census Tract 107.01;
Census Tract 107.02;
Census Tract 108.01;
Census Tract 108.02;
Census Tract 109.02;
[Census Tract 125.01;
Census Tract 125.02;
Census Tract 126;
Census Tract 127.01;
Census Tract 128.01;
Census Tract 128.02;]
Census Tract 129.01;
Census Tract 129.02;
Census Tract 130.01;
Census Tract 130.02;

Census Tract 130.03;
Census Tract 131;
Census Tract 132.01;
Census Tract 132.02;
Census Tract 134.02;
Census Tract 134.05;
Census Tract 144; and
[Census Tract 147; and]
Platte County.

128.260. The sixth district shall be composed of the following:
Adair County;
Andrew County;
Atchison County;
Audrain County;
Buchanan County;
Caldwell County;
Carroll County;
Chariton County;
Clark County;
Clinton County;
Daviess County;
DeKalb County;
Gentry County;
Grundy County;
Harrison County;
Holt County;
Knox County;
Lewis County;
Lincoln County;
Linn County;
Livingston County;
Macon County;

Marion County;
Mercer County;
Monroe County;
Nodaway County;
Pike County;
Putnam County;
Ralls County;
Randolph County;
Ray County;
Schuyler County;
Scotland County;
Shelby County;
Sullivan County;
Warren County; and
Worth County.

128.270. The seventh district shall be composed of the following:

Barry County;
Cedar County;
Christian County;
Dade County;
Dallas County;
Douglas County;
Greene County;
Jasper County;
Lawrence County;
McDonald County;
Newton County;
Ozark County;
Polk County;
Stone County;
Taney County;
Webster County; and

Wright County.

128.280. The eighth district shall be composed of the following:

Boone County;
Callaway County;
Camden County;
Cole County;
Cooper County;
Crawford County;
Dent County;
Franklin County (part):
Census Tract 8011;
Gasconade County;
Howell County;
Laclede County;
Maries County;
Miller County;
Moniteau County;
Montgomery County;
Morgan County;
Oregon County;
Osage County;
Phelps County;
Pulaski County;
Reynolds County;
Shannon County;
Texas County; and
Washington County.

128.290. The ninth district shall be composed of the following:

Bollinger County;
Butler County;
Cape Girardeau County;

Carter County;
Dunklin County;
Iron County;
Jefferson County;
Madison County;
Mississippi County;
New Madrid County;
Pemiscot County;
Perry County;
Ripley County;
Ste. Genevieve County;
St. Francois County;
Scott County;
Stoddard County; and
Wayne County.

128.300. Unless otherwise specified all references in sections 128.200 to 128.300 to counties, cities, townships, census tracts, block groups, blocks, and enumeration districts shall mean those counties, cities, townships, census tracts, block groups, blocks, and enumeration districts designated as such by the United States Bureau of the Census on the 1980 Census Maps issued by the Bureau to the office of administration of the state of Missouri and for which final population totals were reported by the Bureau pursuant to Public Law 94-171.

[128.020. When any new apportionment shall be made of the members to be elected to the house of representatives of the United States, whereby the number of electors to which this state may be entitled shall be increased or diminished, it shall be the duty of the governor to lay off the state into as many districts as shall be equal to the number of electors to which this state shall then be entitled, so that the said districts

contain, as near as may be, an equal number of inhabitants.]

[128.030. It shall be the duty of the governor, whenever he shall exercise the power hereby vested in him, to give notice of the division made by him, by proclamation, to be published in not to exceed two newspapers in each of said districts in this state, sixty days at least before the first election under such arrangement.]

[128.204. The state of Missouri is hereby divided into ten congressional districts, the legal voters of each district to elect one member of Congress of the United States.]

[128.214. The first district shall be composed of the following wards in the city of St. Louis: 1, 2, 3, 4, 18, 19, 20, 21, 22, 25, 26, and 27; of precincts 3 through 18 of ward 5; of Washington township in St. Louis County; of Hadley township in St. Louis County; of all of Lincoln township in St. Louis County except precinct 5; of the following precincts of Normandy township in St. Louis County: 1, 2, 3, 4, 5, 6, 7, 29, and 38; and of the following precincts of St. Ferdinand township in St. Louis County: 29, 30, 32, 41, 50, 51, and 59.]

[128.224. The second district shall be composed of the following townships in St. Louis County: Airport, Clayton, Creve Coeur, Ferguson, Gravois, Jefferson, Midland; all of St. Ferdinand except precincts 29, 30, 32, 41, 50, 51, and 59; all of Normandy except precincts 1, 2, 3, 4, 5, 6, 7, 29, and 38; and the following precincts of Bonhomme township: 8, 19, 41, 48, 59, 77, 89, 90, 91, and 93.]

[128.234. The third district shall be composed of the following wards in the city of St. Louis: 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 23, 24, and 28; of precincts 1, 2, 19, and 20, of ward 5; of all of Lemay township in St. Louis County except precincts 14, 15, 16, 17, 19, 29, and 34; and of precinct 5 of Lincoln township in St. Louis County.]

[128.244. The fourth district shall be composed of the following wards in the city of Kansas City: wards 15 and 24; of the following townships in Jackson County: Washington, Blue, Brooking, Fort Osage, Van-

Buren, Prairie, and Sni-A-Bar; of the following counties: Cass, Bates, Vernon, Barton, St. Clair, Henry, Johnson, Lafayette, Saline, Pettis, Morgan, and all of Benton except Alexander, Fristoe, and Union townships; and of Willow Fork, Moreau, Pilot Grove, Harrison, and Burris Fork townships of Moniteau County.]

[128.254. The fifth district shall be composed of the following wards in the city of Kansas City: wards 1 through 14, inclusive; 16 through 20, inclusive; and wards 22, 23, and 25.]

[128.264. The sixth district shall be composed of the following counties: Atchison, Holt, Nodaway, Andrew, Buchanan, Platte, Worth Gentry, DeKalb, Clinton, Clay, Harrison, Daviess, Caldwell, Mercer, Grundy, Livingston, Linn, Ray, Putnam, Sullivan, Chariton, Carroll, Schuyler, and all of Scotland except Johnson, Thompson, and Harrison townships.]

[128.274. The seventh district shall be composed of the following counties: Laclede, Jasper, Newton, McDonald, Cedar, Dade, Lawrence, Barry, Camden, Hickory, Polk, Greene, Christian, Stone, Taney, Dallas, Webster, Wright, and all of Douglas except Clinton, McKinley, Richland, Bryan, and Brush Creek townships; of Alexander, Fristoe, and Union townships of Benton County; and of Franklin township of Miller County.]

[128.284. The eighth district shall be composed of the following counties: Howard, Cooper, Cole, Pulaski, Phelps, Texas, Dent, Crawford, Washington, Jefferson, all of Boone County except Bourbon, Centralia, and Perche townships, all of Miller County except Franklin township, and all of Moniteau County except Willow Fork, Moreau, Pilot Grove, Harrison, and Burris Fork townships; and of the following townships of St. Louis County: Concord, Meramec, all of Bonhomme except precincts 8, 19, 41, 48, 59, 77, 89, 90, 91, and 93, and precincts 14, 15, 16, 17, 19, 29, and 34 of Lemay township.]

[128.294. The ninth district shall be composed of the following counties: Macon, Adair, Clark, Knox,

Lewis, Shelby, Marion, Randolph, Monroe, Ralls, Audrain, Pike, Callaway, Osage, Montgomery, Lincoln, Warren, Gasconade, Franklin, St. Charles, Maries; Bourbon, Perche, and Centralia townships of Boone County, and Johnson, Thompson, and Harrison townships of Scotland; and of the following townships of St. Louis County: Spanish Lake and Florissant.]

[128.304. The tenth district shall be composed of the following counties: Howell, Shannon, Reynolds, Iron, St. Francois, Ste. Genevieve, Perry, Cape Girardeau, Madison, Wayne, Carter, Oregon, Ripley, Butler, Bollinger, Stoddard, Scott, Mississippi, New Madrid, Pemiscot, Dunklin, Ozark, and Clinton, McKinley, Richland, Bryan, and Brush Creek townships of Douglas County.]

[128.306. All references in this chapter to boundaries, townships, and precincts within the city of St. Louis, St. Louis County, and Jackson County, mean those boundary lines, townships, wards, and precincts as they existed on the fifteenth day of June, 1965.]

[128.340. When any new county shall be organized, such county shall constitute and form a portion of the same congressional district embracing at the time the county or counties from which such new county shall be organized; and if any such county shall be organized from two or more counties lying in different congressional districts, then such county shall form and constitute a part of the congressional district embracing, at the time, the greater portion of the territory constituting such county thus organized.]

/

HB 1 (0028)
11/6/81

MISSOURI

1980 CENSUS
FINAL COUNTS

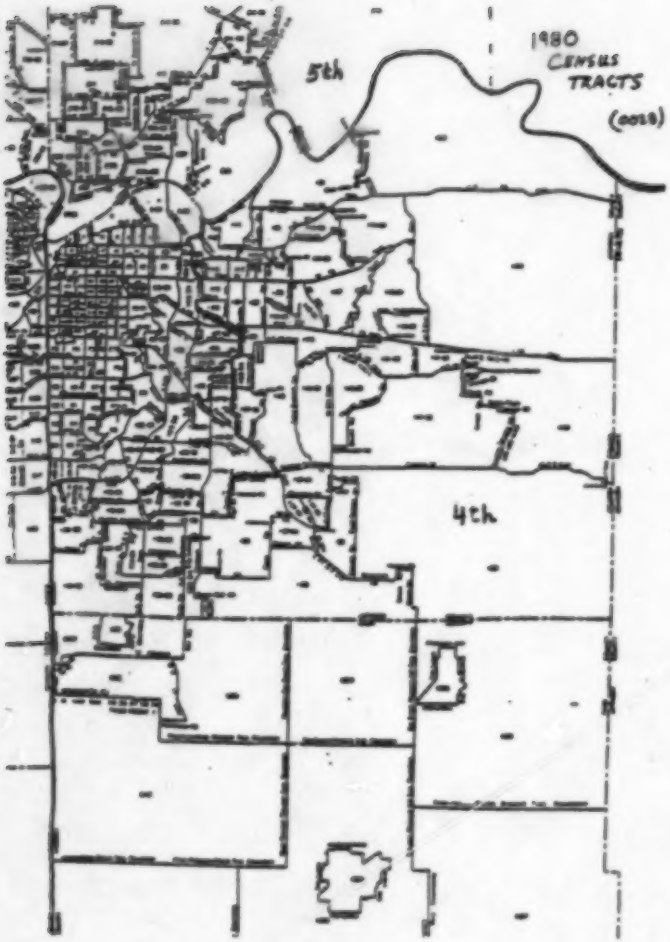
J.R. Fix 11/6/81

—30/—
Corrects

St. Louis County
Census Tracts
(1970)
N
2nd
544,751
1st
545,
3rd
545,866

-324

CITY of ST. LOUIS


1980
CENSUS
TRACTS
(2018)
5th
4th

Motion to Dismiss or Affirm

Supreme Court, U.S.
FILED
APR 15 1982
ALEXANDER L. STEVAS
CLERK

NO. 81-1731

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1981

ADOLPH SCHATZLE,
Appellant,

VS.

HONORABLE JAMES C. KIRKPATRICK ET AL.,
Appellees.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

MOTION TO AFFIRM

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The appellees, City of St. Louis, Vincent C. Schoemehl, Jr. and Geraldine Osborn, file this Motion to Affirm pursuant to Supreme Court Rule 16.1.(c) and (d). The prerequisite for the appellees to file said motion under Rule 16.1.(c), and for the Court to receive and review such a motion, is that ". . . it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument." Rule 16.1.(d) does not provide for any specific reason for an appellee to file a motion to affirm, but rather it provides in general catch-all language for said motion on " . . . any other ground the appellee wishes to present as a reason why the Court should not set the case for argument." It is within the parameters of Rule 16.1.(c) and (d)

that these appellees file this Motion to Affirm.

The questions as presented in appellants Jurisdictional Statement are:

1. whether the district court erred, in view of the principles of comity and federalism, in adopting its own plan instead of adopting a plan considered by the Missouri legislature; and

2. whether Kirkpatrick v. Preisler, 394 U.S. 526, 89 S.Ct. 1225 (1969) should be overruled.

The appellant argues that federal judiciary, by providing congressional districts, unduly interfered with a legitimate activity of the State, and such interference, in conjunction with the federal court

providing a redistricting plan that was not considered by the legislature, meets the jurisdictional criteria of Supreme Court Rule 15.1(h) which provides that the jurisdictional statement must provide "a statement of the reasons why the questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution."

The thrust of the appellant's argument is that the district court, in failing to adopt or modify one of the two plans that went furthest in the Missouri legislature, failed to honor the state policies expressed in those plans thereby violating the minimal interference principle of White v. Weiser, 412 U.S. 783, 795 (1973). The Weiser case is distinguishable from the

instant case because in the Weiser case, Senate Bill One (also referred to in the Opinion of the Court as Plan A) which provided for the congressional redisticting of the State of Texas, was signed into law. It was Senate Bill One which was challenged as being in violation of the appellees rights under Act 1, §2, and the Equal Protection Clause of the Fourteenth Amendment. Appended to their petition was appellees redistricting plan (referred to by the Court as Plan B). In the instant case the suit was not initiated in court because an alleged unconstitutional redistricting plan was passed by the Missouri legislature, but rather, the suit was initiated because the legislature failed to provide for new congressional districts as provided by Act III §45 of the Missouri

Constitution. The state legislature did not act by passing an alleged unconstitutional plan, it failed to provide any plan for congressional redistricting.

The three judge court did not sua sponte become involved in the congressional redistricting. The court was convened only after the suit was filed, and one of the remedies requested was that the court redistict the state. There is no doubt that the duty to formulate congressional districts is placed upon the General Assembly. Article III, Section 45 of the Missouri Constitution. White v. Weiser, 412 U.S. 783, but if that duty has not been performed it is incumbent on the courts to provide the necessary congressional redistricting.

In the instant case the court had before it various plans submitted to the court and/or considered by one of the two houses of the legislature, but unlike the Weiser case no plan was enacted into law, and, in fact, no single plan was passed by both houses of the legislature. Since the plans discussed or proposed by various members of the general assembly had different features and different congressional boundaries, there was no concensus among the legislators, and therefore, there could hardly be a pre-emption of the legislative task or an intrusion upon state policy. The court was not provided with any determination or indication by the legislators as to what the legislators considered the state policy. Also, unlike Weiser, there has been no concession of the parties that

any plan submitted to the court "adhered to the districting preferences of the state legislature while eliminating population variances."

It should be noted that the general assembly was called into a special session for the purpose of redistricting the congressional districts, but the general assembly was unable to agree on any one plan and the special session adjourned without enacting redistricting legislation.

The Court, in the instant case, was well aware of its legal constraints in drafting a congressional redistricting plan. App. 26 et seq. and it reviewed and analyzed each criteria upon which it based its plan. The Court took into account legislative practices (App. 40), historical practices regarding apportionment (App. 44), but

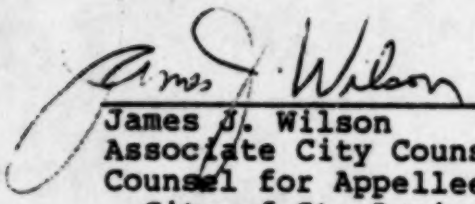
the Court, as it should be, was guided primarily by equality of population and compactness. The Court did not err by not adopting or modifying the Griffith plan or the Senate Committee Substitute plan because it met the requirements that the Constitution and this Court had prescribed.

CONCLUSION

For the foregoing reasons, Appellees respectfully request this Court affirm the decision of the District Court and not accept briefs on the merits and oral argument.

Respectfully submitted,

JOSEPH R. NIEMANN,
CITY COUNSELOR



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